TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 334.

THE ONONDAGA NATION; TE-HEE-HA, DAYGACHE-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEH-GO-WAH, AND JARVIS FARMER, ONONDAGA INDIANS; SHONG-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-OH-WAH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JOHN BOYD THACHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED FEBRUARY 4, 1907.

(16,294.)

(18,394.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 234.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEN-GO-WENLE, AND JARVIS FARMER, ONONDAGA INDIANS; HO-DO-OH-GO-AH, A SENECA INDIAN; HA-JA-AH-GWYSH, A CAYUGA INDIAN, AND THE UNIVERSITY OF THE STATE OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

JOHN BOYD THACHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1902.

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In the Court of Appeals of the State of New York.

THE ONONDAGA NATION; TE-HES-HA, SAY-HAQUE, HOS-HAY-QUA, Sho-heb-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs, Appellants,

against

JOHN BOYD THACHER, Defendant, Respondent.

Papers on Appeal.

As-que-sent-wah (Edward Winslow Paige), attorney for plaintiffs-appellants.

John A. Delehanty, attorney for defendant-respondent.

Statement required by Rule 41.

This action began by the defendant's appearance ninth of October, 1897. It was originally brought by the Onondaga Nation and Te-hes-ha, an Onondaga Indian.

By order made twentieth December, 1898, Sayhaque, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian, Ha-ja-ah-gwysh, a Cayuga Indian, and the University of the State of New York, were made additional plaintiffs. 2a

There has been no other change of parties.

The action was tried at a Special Term, at Syracuse, without a jury, twenty-second of December, 1898, and resulted in a judgment dismissing the complaint. From this plaintiffs appeal.

3a

SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE,
Plaintiffs,

against

JOHN BOYD THACHER,
Defendant.

Plaintiffs show to the Court, on information and belief,—the plaintiff Te-hes-ha on behalf of all others of the Ho-de-no-sau-nee as well as on his own behalf:

That long before Hendrik Hudson sailed up North River there were and still are five nations of Indians, which then lived upon that part of what is now New York which they called the Highest Land on Earth, being that portion of the earth's surface extending from what is now Schenectady nearly to the Niagara River. They were called by themselves, according to the human being whose writing about it is, so far as we know, the first, Ageoegomie (or Kajinga), Onneyatte, Onaondage, Koyuckure and Sehenehalaton, but to beings who have used English

speech they have been and still are called, the names coming in the same order as above, Mohawks, Oneidas, Onondagas, Cayugas and Senecas. These five nations were united into what is usually called by the human beings who write about them, a league, of which one Hiawat-ha, an Onondaga by birth, but a Mohawk by adoption, was the founder. They were called by themselves "Ho-de-no-sau-nee," which means "People of The Long House," of which the Mohawks, at what is known now as Schenectady, where Hiawat-ha lived, kept the eastern door, the Senecas the western door and the Onondagas, in the Onondaga Valley, where they, being the plaintiffs, still live, the central council fire. They had no written language and their way of keeping the memory of things which happened was by the use of belts made of wampum, which had been invented by the said Hiawat-ha in this way: As he came east from the Onondagas to the Mohawks, stopping upon the shore of Oneida Lake, he strung together a quantity of small shells to remind him of the different things which he wanted to say when he reached the Mohawks. From that time record was made by the delivery of wampum belts, and those of the Ho-de-no-sau-nee, as well as those of the Onondaga Nation, were deposited with the latter as the keeper of the Central Council Fire, and by it entrusted to the keeping of an officer by it appointed for that purpose and called in English the "Wampum-keeper."

In the year eighteen hundred and ninety-two, the wampum which had thus been accumulating since the time of Hiawat-ha, was in the posses-

sion of one Thomas Webster, the then wampum- 7
keeper, and in that year one Carrington, being
then in charge of the Indian part of the United
States Census for New York, induced the said
Webster to deliver to him, the said Carrington,
the said wampum, for the doing of which the
said Carrington paid to the said Webster the
sum of eighty-five dollars. That thereupon the
said Carrington assumed or attempted to sell the
said wampum to the Reverend Doctor Oliver
Crane, of Boston, for which the said Reverend
Doctor paid to the said Carrington the sum of
three hundred and fifty dollars. That early in 8
the year eighteen hundred and ninety-three, one
Sanborn, hereinafter mentioned, applied to one
Donald McNaughton and the defendant to sell
to the State of New York four of the said
wampum belts, being the four belts hereinafter
described, said McNaughton and the defendant
being then two of the Managers for New York
of the World's Fair or Columbian Exposition,
for five hundred dollars, saying that the afore-
said Reverend Doctor had been offered eight
hundred dollars for them by Yale College, but that 9
as they came from the New York Iroquois, the
Ho-de-no-sau-nee meaning, he, the Reverend
Doctor, "felt" that they should be the property
of the State of New York, and because of that
feeling was willing to sell them for five hundred
dollars to the State of New York, thus sacrificing
three hundred dollars to that feeling. The de-
fendant, expressing to the said McNaughton the
opinion that they had no appropriations from
the State which they could use for that purpose,
paid the five hundred dollars himself and re-

ceived the following described four belts from the Reverend Doctor, through the said Sanborn, and still has them.

That on the twenty-first day of December, eighteen hundred and ninety-six, the defendant wrote to the Secretary of the Board of Regents of New York a letter of which the following is a copy:

"CITY OF ALBANY,
"MAYOR'S OFFICE,
"ALBANY, December 21, 1896.

"ASSIDUITY.

"JOHN BOYD THACHER,
"Mayor.

"MELVIL DEWEY, Esq.,
"State Capitol,
"Albany, N. Y.

"DEAR MR. DEWEY:

"Your favor of December 19, 1896, is received. The wampum exhibited in the Government building and in the space allotted to "New York State, is my own personal property. The big piece was made to commemorate the union of the Five Nations and is "contemporaneous with Hiawatha. I think "you must be referring to some other wampum "to which I have seen allusions in the public "press. Some woman is said to have made a "collection which she is proposing to place on "exhibition, but I have no knowledge of any "interesting or valuable pieces which she possesses. The Onondaga tribe still possesses "two pieces of great historical interest, but the "tribe has parted with the most interesting of "its relics.

"Yours,
"JOHN BOYD THACHER."

On the twenty-sixth of December, eighteen hundred and ninety-six, the defendant sent to Mr. Dewey a letter of which the following is a copy: 13

"CITY OF ALBANY,
"MAYOR'S OFFICE,
"ALBANY, December 26, 1896.

"ASSIDUITY.
"JOHN BOYD THACHER,
"Mayor.
"Prof. MELVIL DEWEY,
"Board of Regents,
"Albany, N. Y.

DEAR MR. DEWEY: 14

"If you will refer to page 84 of the printed "report of the Board of Managers of the New "York Exhibit, you will see that the piece of "wampum known as the Washington Belt, was "exhibited by me, and by referring to page "495, you will perceive that the original piece "of wampum made to commemorate the con- "federation of the five tribes was also exhibited "by me. I have two other pieces of historical "interest. At the time my attention was called "to this, it was the opinion of Mr. McNaugh- "ton, then Chief Executive Officer of the Board, 15 "and myself, that the Board had no right to "purchase the wampum with moneys appropri- "ated under the Act. I, therefore, made the "purchase myself. The financial report, be- "ginning on page 578, covers all details of ex- "penditure, and will disclose the fact that the "State never expended a dollar for the wam- "pum. Certain sums were appropriated for "the purchase of material with which the "Indians wrought out the exhibits for sale in "order that they might maintain themselves in

16 " Chicago, but an examination of the accounts
" will show that this expenditure was for raw
" material, such as straw, ribbons, etc. I make
" this statement so that you can fully under-
" stand the matter, and explain to Mrs. Con-
" verse, or anyone else interested in the subject.
" The Washington Belt is most interesting al-
" though far inferior in historical interest to the
" Hiawatha Belt.

" Yours,

" JOHN BOYD THACHER.

17 " MORRIS."

The title of the report referred to in the last above letter is as follows:

" NEW YORK AT THE WORLD'S COLUMBIAN EXPOSITION, 1893 "

(Senate Document Number 86 of 1894),

being a " Report of the Board of General Man-
" agers of the Exhibit of the State of New York
" at the World's Columbian Exposition." It was made to the Governor of New York, eighteenth of April, 1894, and signed by, among others, the defendant.

18 At page 495 of the print it contains the following:

" REPORT ON THE NEW YORK INDIAN EXHIBIT.
" By REV. JOHN W. SANBORN, Director.

" When the Dutch settled New Amsterdam
" in 1614 they found a Republic in the wilder-
" ness whose Constitution and laws were free
" from complications, which have so often led,
" among other races, to conflict—a Constitution
" framed to prevent political corruption, and
" which achieved, in the hands of its founders,

"eminent success in that important particular. 19
"The confederacy was in so complete a state
"when New York was founded that historians
"are justified in their conclusion that it had been
"previously in successful operation for many
"years. The Iroquois were called the Five
"Nations, and included the following tribes:
"Mohawks, Onondagas, Senecas, Oneidas and
"Cayugas. Their federal arms consisted of a
"bear, a deer, a wolf, a turtle, and a beaver.

"The original piece of wampum made to com-
"memorate the confederation of the five tribes,
"and which, therefore, antedates the Colum- 20
"bian discovery, is owned by Hon. John Boyd
"Thacher, of Albany, N. Y., and during the
"exposition was exhibited in the Government
"Building."

At page 496 of the print is the following:

"The league" (the above-named "republic"
and "confederacy" meaning) "was a union of
"five tribes made up of clans, all forming one
"government, each tribe having local authority
"like our individual states. There was a gen- 21
"eral council of Sachems, fifty in number, of
"equal rank and authority. This council had
"supreme power in matters pertaining to the
"league. The fifty Sachems held office perpet-
"ually. They had power to fill vacancies in the
"clans by elections but only on the nomination
"of the eldest women of the clan. These
"Sachems could depose a chief for cause, but
"they could not invest a Sachem with office;
"the general council did that. The Sachems of
"any tribe, with the war chiefs of that tribe,

"formed the council of the tribe and had au-
"thority similar to that of a State Legislature.
"All public acts became so only by the unani-
"mous decision of the league. The Sachems
"voted by tribes in the general council; thus, a
"small tribe had as much power as a large one.
"The council of each tribe had power to con-
"vene the general council, but the general coun-
"cil had not power to convene itself. The ora-
"tors of the people had perfect liberty to discuss
"public questions before the general council, but
"only the general council could render a decis-
"ion. Such, in brief, are the characteristics of
"the famous league of the Iroquois."

At pages 83 and 84 of the print, is the following:

"GOVERNMENT BUILDING."

"In the rotunda of the Government Building
"were thirteen large panels which were at the
"disposal of the thirteen original States for a
"display of colonial and historical relics and
"curios. New York's was especially attractive
"in interesting relics owing to the broad and
"rich domain of early New York history and to
"the exertions and influence of Mrs. Jones, of
"the Board of Women Managers, and Mr.
"Thacher, of the Board of General Managers,
"in securing the loan of articles for the exhibi-
"tion, and in bringing many famous mementoes
"from their hiding places."

(Page 84): "Prominent among the articles
"exhibited were the Washington relics from the
"State Library, autographs of the Presidents
"and the Signers of the Declaration of Inde-

"pendence, original model of Fulton's 'Cler- 25
"mont,' and the wampum belt commemorative
"of the first treaty and alliance of the Six Nations
"of New York, and now in the possession of
"Hon. John Boyd Thacher, of Albany."

That on the seventh day of March, 1893, the said Sanborn wrote and sent to the aforesaid Reverend Doctor, and to the wife of the latter, a letter of which the following is a copy, and which enclosed a paper writing, of which what immediately follows the copy of the letter is a 26 copy:

"WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
Indian Exhibit of the State
of New York
at the
World's Columbian Exposition.

"THE CAPITOL, ALBANY, N. Y..... 189...
"NAPLES, N. Y., March 7, 1893.

"DEAR FRIENDS, 27
"DR. AND MRS. CRANE:

"The precious wampum came in good
"order on Saturday and will soon be shipped
"with our other curiosities to Chicago, and will
"add very much to the interest of the N. Y.
"Indian Exhibit. I will see to it that the de-
"scriptions are in larger type, and printed in fine
"style, giving the history of the past and the
"recent history as well, so as to set forth all the
"interesting facts in connection with the wam-
"pum.

28 "I enclose a form of receipt which, on receipt
"of the money due you, you may if you please
"sign unless the Senator should make out a
"form. It will not be necessary to make two
"copies except for historical interest.

"Concerning my type-writer, I would say it is
"a Remington, No. 2, and works perfectly and
"rapidly.

"I am to have a picture of these wampums
"taken, and engraved for insertion in my His-
"tory of the Six Nations, and I shall there give
"the history of it and make note of our purchase
29 "of it from you and Mrs. Crane. I am almost
"engulfed with work, but it is a pleasure to stop
"to write to you.

"Sincerely yours,
"JOHN W. SANBORN.

"P. S. I did not date the receipt. I will
"leave that to you to do when the money arrives.

"Yours,
"J. W. S."

"RECEIPT FOR WAMPUM."

30 "WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
Indian Exhibit of the State
of New York
at the
World's Columbian Exposition.

"THE CAPITOL, ALBANY, N. Y.,.....189..

"RECEIVED FROM Hon. Donald McNaughton,
"Chief Executive Officer of The Board of
"General Managers of the New York Exhibit

" at the World's Fair, and John Wentworth 31
" Sanborn, Director-in-Chief of the New York
" Indian Exhibit at the World's Fair, acting for
" the State of New York, Five Hundred Dol-
" lars, ($500.00) for one case of four Wampum
" Belts, as follows, viz: One Belt of dark
" wampum beads representing the Confedera-
" tion organization of the Five Nations under
" Hiawatha; One Belt representing the First
" Treaty stipulation between the Six Nations
" and General George Washington, picturing in
" Wampum bead-work the Council House,
" General Washington, the O-do-ta-ho, or Presi- 32
" dent of the tribes, and thirteen representatives
" of the Colonies; also two fragments of other
" Belts, one representing the first approach to
" the Indians of the 'People with white faces,'
" and the other a narrow Belt representing the
" unity of the Five Nations."

In the year seventeen hundred and thirteen the Tuscororas, another and kindred Indian nation, were admitted into the league, and thus became one of the Ho-de-no-sau-nee, or Six Nations, and have ever since continued to be 33 and still are so. That no consent or authority was given to the said Webster to sell or part with any of such wampum by the aforesaid Ho-de-no-sau-nee, or Six Nations, or by its senate or council, or by any one of the said Six Nations or the council of any of them, or any one in authority among them, and particularly by any of the plaintiffs, and that the wampum hereinafter described was then and still is the property of the said Ho-de-no-sau-nee, or Six Nations, and not of any one of them or of the said Web-

ster; and the defendant, at the time he paid the money as aforesaid, knew or believed that the wampum belt first hereinafter described "was made to commemorate the union of the" aforesaid "Five Nations" and "was contemporaneous with Hiawat-ha," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes.

And that the said wampum belt first hereinafter described "was made to commemorate the union of the" aforesaid "Five Nations and" was "contemporaneous with Hiawat-ha," and had once been the property of the said Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt secondly hereinafter described was made to commemorate a treaty made between the Ho-de-no-sau-nee, or Six Nations, and General Washington, and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes.

And that the said wampum belt secondly hereinafter described was made to commemorate a treaty made between the Ho-de-no-sau-nee, or Six Nations, and General Washington, and had once been the property of the Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt thirdly hereinafter described was made to commemorate or represent "the first approach

to the Indians of the people with white faces," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes. 37

And that the said wampum belt thirdly hereinafter described was made to commemorate or represent "the first approach to the Indians of the people with white faces," and had once been the property of the Ho-de-no-sau-nee.

That the defendant, at the time he paid the money as aforesaid, knew or believed that the belt fourthly hereinafter described was made to commemorate or represent "the unity of the" Ho-de-no-sau-nee, or "Five Nations," and that it had once been the property of the Ho-de-no-sau-nee. It was that fact, so believed by him, which gave to it an historical interest which made it of value in his eyes. 38

And that the said wampum belt fourthly hereinafter described was made to commemorate or represent "the unity of the" Ho-de-no-sau-nee, or "Five Nations," and that it had once been the property of the Ho-de-no-sau-nee. 39

That the defendant, at the time he paid the money as aforesaid, knew or believed that all of the wampum belts hereinafter described were the property of the Ho-de-no-sau-nee, and it was that fact, so believed by him, which gave to them the historical interest which made them of value in his eyes. That he had not then, and has not since, been informed that the council, or senate, or any governing body, or any royaner of the Ho-de-no-sau-nee, or Six Nations, had given any authority or permission to the

said Webster to sell or part with any of the said wampum, and he did not then believe and does not now believe that any such authority had ever been given.

That the plaintiff Te-hes-ha is an Onondaga, and one of the chiefs of the Onondaga Nation, and that at and by a governing council of that Nation regularly convened, being the body which has supreme authority in that Nation, Harriet Maxwell Converse, of New York City, was, prior to the bringing of this action, regularly appointed the agent and attorney in fact of the said Nation to recover the said wampum.

The said wampum is described as follows:

One belt of dark wampum beads, representing the confederation organization of the Five Nations under Hiawatha, being the "big piece" spoken of in the first above letter, and which was exhibited at Chicago as above stated.

One belt representing the First Treaty stipulation between the Six Nations and General George Washington, picturing in wampum bead work the Council House, General Washington, the To-do-da-ho, or president of the Nations, and thirteen representatives of the States, being the belt spoken of in the above letters as "The Washington Belt," and which was exhibited at Chicago as above stated.

A fragment of a wampum belt representing the first approach to the Indians of the "people with white faces."

A fragment of a belt, or a narrow belt, representing the unity of the Five Nations.

These last two being the "two other pieces

of historical interest" mentioned in the second above letter. 43

And that at the date aforesaid, the said Ho-de-no-sau-nee were the owner, and through the wampum-keeper of the Onondaga Nation, being the said Webster, were in the possession of the said wampum, and being so in possession, the said Carrington, on or about the date aforesaid, without the consent of either of the plaintiffs, or any of the Ho-de-no-sau-nee, except the said Webster, and without the consent of its council or senate or governing body, and without the consent of any one of the aforesaid Six Nations, or any council or governing body of any one of them, or any officer in authority of any one of them, wrongfully took said wampum from the possession of the said Onondaga Nation, and the same came wrongfully, as aforesaid, into the possession of the defendant, and that the defendant wrongfully detains the same. 44

That before the beginning of this action the Onondaga Nation and the plaintiff Te-hes-ha, on behalf of all of the Ho-de-no-sau-nee as well as himself, each separately demanded of the defendant the delivery of each of the aforesaid belts of wampum, and defendant refused to deliver any of the same; that is to say, the defendant made no answer and has not delivered any of the same. 45

That the individuals of the Ho-de-no-sau-nee, or Six Nations, are more than five thousand in number.

WHEREFORE, the plaintiffs demand that the defendant be adjudged to deliver to the plaintiffs the said belts of wampum, and to pay the

46 plaintiffs damages for the detention thereof to the sum of five hundred dollars, besides costs, and that a receiver may be appointed by the Court to take the custody and immediate possession of the said belts of wampum during the pendency of this action; and that in the meantime the defendant be enjoined from disposing of, destroying, cutting, mutilating, injuring, concealing or removing out of the jurisdiction of this Court, the said belts of wampum, or any of them.

47 EDWARD WINSLOW PAIGE,
Plaintiffs' Attorney,
44 Cedar Street,
New York.

48

New York County, ss. : 49

HARRIET MAXWELL CONVERSE, being duly sworn, says that she is the agent and attorney in fact of the plaintiff, the Onondaga Nation, for the recovery of the wampum mentioned in the foregoing complaint.

That she has read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes it to be true. 50

That the reason why this affidavit is made by her and not by one of the plaintiffs is that neither of the plaintiffs is in the County of New York or the County of Schenectady. That she resides in the County of New York and the plaintiffs' attorney resides in the County of Schenectady.

That the grounds of her belief as to the matters stated in the complaint are :

1. The originals of the letters, report and paper above quoted. 51

2. The general history of the Ho-de-no-sau-nee.

3. The report of the last United States Census as to Indians, supposed as to New York to have been made by the said Carrington.

4. As to the allegations that no consent had been given, information given by the plaintiff Te-hes-ha and the other chiefs of the Onondaga present at the Council alluded to in the com-

52 plaint, and by chiefs of all the others of the Six Nations, except the Mohawks; and the fact that no Six Nation council was held near that time.

5. Letters of the said Carrington and the said Sanborn.

HARRIET MAXWELL CONVERSE.

Sworn to before me this 28th day of September, 1897.

A. ACKERMAN,
[L. S.] *Notary Public*,
N. Y. County.

53

54

SUPREME COURT. 55

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on that of all of the HO-DE-NO-SAU-NEE,
Plaintiffs,

against

JOHN BOYD THACHER,
Defendant. 56

Upon the complaint, duly verified, and the affidavit of Harriet Maxwell Converse, annexed, it is

Ordered, that the defendant be, and he hereby is, until the further order of the Court, enjoined and restrained from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of the Court the belts of wampum described in the complaint or any of them. 57

The grounds of this injunction are that the Ho-de-no-sau-nee are the owners of the wampum and the Onondaga Nation is its official custodian, and that it appears that the plaintiffs are entitled to a judgment, as prayed in the complaint.

Dated October 1st, 1897.

ALONZO P. STRONG,
County Judge,
Schenectady County.

58 SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf, and also on behalf of all of the HO-DE-NO-SAU-NEE,

vs.

59 JOHN BOYD THACHER.

For answer to the complaint herein,

I.—The defendant alleges that on or about the first day of March, 1893, the Rev. Dr. Oliver Crane, mentioned and referred to in the complaint, sold and delivered to the defendant the several belts of wampums, so called, which the person who drafted the complaint herein has attempted to describe. That in consideration of such sale and delivery of said belts of wampum the defendant agreed to pay and did pay to the said Rev. Dr. Oliver Crane the sum
60 of $500 in lawful money, and thereupon became, ever since has been and is now the true and lawful owner of each and every of said belts of wampum. That the foregoing is the transaction attempted to be described in the complaint in this action and none other.

II.—The defendant admits that during the year 1895 and prior to the sale and delivery of said belts of wampum hereinbefore described, the Rev. John Wentworth Sanborn, mentioned and referred to in the complaint, applied to one Donald MacNaughton and the defendant, who were then and there

two of the managers for the State of New York of 61
the World's Fair or Columbian Exhibition, and
offered in behalf of the said Rev. Dr. Oliver Crane
to sell said belts of wampum to said MacNaughton
and defendant as such Managers with the object in
view of having the same constitute a portion of the
the exhibit of the State of New York at said
Columbian Exhibition. That the defendant, be-
lieving that such proposed purchase on behalf of
the State of New York would be unlawful for the
reason that the moneys appropriated by said State
for the use of said Managers in connection
with said Exhibit were not applicable to and 62
could not be devoted to any such purpose, there-
after upon the solicitation of said Rev. John
Wentworth Sanborn, so acting in behalf of said
Rev. Dr. Oliver Crane, became the purchaser of
said belts of wampum in manner and form afore-
said and paid out of his own personal moneys to the
said Rev. Dr. Oliver Crane, who, as defendant is
informed and verily believes, was at that time the
true and lawful owner thereof, the sum of $500,
and also admits that defendant has not since such
purchase and sale delivered any of said belts of
wampum to the parties named as plaintiff in this
action or to any other person or persons who claim 63
to have made any demand for the possession of the
same.

III.—The defendant admits that on or about the
21st day of December, 1896, the defendant wrote
to the Secretary of the Board of Regents of the
State of New York a certain letter, a copy of which
is set forth in the complaint, dated on that date,
and alleges that said letter was written in reply to
a letter theretofore received from said Secretary of
the Board of Regents, of which the following is a
copy:

64 "REGENTS OFFICE, ALBANY, N.Y.,
19 d '96.

Hon. JOHN BOYD THACHER,
Albany, N. Y.

DEAR MR. THACHER: We are just ordering some handsome cases to display a selection of our Indian relics in the new Indian museum. The most valuable thing, of course, will be the wampum collection. As I understand it, the wampum exhibited at Chicago was left in your custody till there was place for it in a fireproof building. I told Mr. Richmond that as soon as he was ready
65 for it I would find out from you just how much you had belonging to the state. Will you kindly let me know, as he is making up his collection to exhibit early in the legislative session?

Yours very truly,
(sd) MELVIL DEWEY."

IV.—The defendant admits that on or about the 26th day of December, 1896, the defendant sent to Mr. Dewey a letter, a copy of which, dated December 26th, 1896, is set forth in the complaint, and alleges that said letter last mentioned was written by defendant in reply to a letter received
66 from said Dewey, of which the following is a copy:

"UNIVERSITY OF THE STATE OF NEW YORK,
ALBANY, 23 December, 1896.

Hon. JOHN BOYD THACHER,
Albany, N. Y.

DEAR MR. THACHER: We have Mrs. Converse's wampum in the safe all right, but what we are looking for is the Washington wampum, the treaty with the Five Nations. There may be some blunder in my information that this was sold to the state of New York and exhibited at Chicago.

Possibly you bought this personally, and it has been confused. If so, it would help me to straighten out these people if you would kindly let me know if you have this particular piece, and that it was an error in reporting it to me as having been bought out of the appropriation for the Chicago exhibit. I must make some explanation, of course, to these people who have called upon me to produce the wampum, of which they seem to have the full history up to its sale, as they supposed, to the state. I was much pleased with the interest you manifested in the national library matter, and with your suggestion of a little farther talk about it some day. I should be delighted to compare notes with you, for you are one of the few men that can grasp a great movement, and that cannot be and are not frightened to death because your grandmother did not do it exactly the same way that is now proposed. It was no disappointment to me that the very day we were talking Congress had failed to appreciate the situation, and on the first test vote defeated a part of the initial plan. 67 68

Yours very truly,

(sd) MELVIL DEWEY."

And the defendant alleges that subsequently and on or about the 19th day of January, 1897, the defendant received from the said Melvil Dewey a letter upon the same subject, of which the following is a copy: 69

"UNIVERSITY OF THE STATE OF NEW YORK,

ALBANY, 18 January, 1897.

Hon. JOHN BOYD THACHER,

Albany, N. Y.

DEAR MR. THACHER: I find your note of January 13 on my return from a trip. I did not understand at all that you were the agent of the state, but

70 that it was purely a personal matter. My suggestion was simply that as a matter of public spirit you might be glad either to give the state the belts which it ought to have secured, or to allow us to have them by refunding what you paid for them. Would you be willing to do this?

Yours very truly,
(sd) MELVIL DEWEY,
Secretary."

V.—The defendant denies that he has any knowledge or information sufficient to form a belief as to the accuracy of the several alleged extracts from
71 the so-called report entitled "New York at the World's Columbian Exhibition, 1893," Senate Document, No. 86 of 1894, contained in the complaint.

Denies, upon information and belief, that no consent or authority was given to Thomas Webster, the keeper of the wampum, to sell or part with any of the wampum by the aforesaid Ho-de-no-sau-nee or Six Nations or by its senate or council or by any one of the said Six Nations or councils or any of them or any one in authority among them; and affirmatively alleges that it was so sold with the
72 full knowledge and consent of the plaintiffs so called and particularly with the knowledge and consent of the so-called Te-hes-ha.

VI.—The defendant specifically denies that the wampum described in the complaint still is the property of the said Ho-de-no-sau-nee or Six Nations or of any other person than the defendant, and specifically denies that the defendant at the time he paid the money aforesaid knew or believed that any or either of said wampum belts were the property of the Ho-de-no-sau-nee at the time of such purchase.

VII.—The defendant specifically denies that he was not informed that the council or senate or any governing body of the Ho-de-no-sau-nee or Six Nations had given any authority or permission to the said Webster to sell or part with said wampum and denies that he did not then believe and does not now believe that any such authority was ever given. 73

VIII.—The defendant specifically denies that any or either of said wampums were ever wrongfully taken from the possession of the said Onondaga Nation, denies that the same came wrongfully into the possession of the defendant, denies that the defendant wrongfully detains the same, and further specifically denies that before the beginning of this action the Onondaga Nation and the plaintiff Te-hes-ha on behalf all the Ho-de-no-sau-nee as well as himself or either of said parties demanded of the defendant the delivery of said belts of wampum. 74

IX.—The defendant denies, on information and belief, that at and by a governing council of the Onondaga Nation, regularly convened, Harriet Maxwell Converse, of New York City, was, prior to the beginning of this action, regularly appointed the agent and attorney in fact of the said Nation to recover said wampum. 75

X.—The defendant denies that he has any knowledge or information sufficient to form a belief as to any or either of the other allegations of the complaint.

XI.—And for a further and separate answer and defense to the complaint herein, the defendant alleges upon information and belief that neither the Onondaga Nation, so called, nor Te-hes-ha, so called, whose names are inserted as plaintiffs in the complaint in this action, have any real

76 interest in this action or the subject-matter thereof, and that no authority was ever given by either of said alleged plaintiffs to any person to commence the action.

XII.—And for a further and separate answer and defense to the allegations of the complaint herein, the defendant alleges that neither the Onondaga Nation, so called, nor Te-hes-ha, an Onondaga Indian, on his own behalf and also on behalf of the Ho-de-no-sau-nee, the alleged parties plaintiff in this action, had or has the legal capacity to sue, or the legal capacity to bring and maintain
77 this action.

Wherefore, the defendant demands judgment that the complaint herein be dismissed, together with the costs of the action.

JOHN A. DELEHANTY,
Attorney for Defendant,
Office and Post-office Address,
Commercial Bank Building,
Albany, N. Y.

STATE OF NEW YORK,
City and County of Albany, } ss.:

JOHN BOYD THACHER, being duly sworn, de-
78 poses and says that he is the defendant in this action, that he has read the forogoing answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN BOYD THACHER.

Sworn to before me this 15th day of November, 1897.

JAMES J. FAMEN,
Com. of Deeds,
Albany, N. Y.

At a Special Term of the Supreme Court, held at the Court House in the City of Syracuse on the twentieth day of December, one thousand eight hundred and ninety-eight. 79

Present—Honorable FRANK H. HISCOCK, Justice.

THE ONONDAGA NATION and TE-HES-HA

against

JOHN BOYD THACHER. 80

A motion having been made by the persons hereinafter named and by the plaintiffs to make such persons additional plaintiffs in this action, after reading and filing the pleadings; the record of the action of the Onondaga Nation on the twenty-sixth of February, 1898, and the bill of sale of the Onondaga Nation to the University of the State of New York, and after hearing Edward Winslow Paige for the motion and the Honorable John A. Delehanty, opposed, it is 81

Ordered, that Sho-heh-do-nah, an Onondaga Indian; Ha-on-wengo-wenle, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-do-eh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and the University of the State of New York be and they hereby are brought into and made parties plaintiff to this action, and that the summons and complaint be and are amended accordingly without further service of the same; that the complaint be further amended without further service of the

82 same by inserting at the beginning this allegation: "The plaintiffs, bringing this action on behalf of "all of the Ho-de-no-sau-nee as well as themselves, "show to the Court," and by adding the following other allegations: "That on the twenty-sixth "day of February, 1898, the Onondaga Nation "elected the University of the State of New York "to the office of wampum-keeper, and, by bill of "sale, sold and transferred to the University of "the State of New York all its interest in the "said wampums."

That the answer be deemed to deny the said alle-
83 gations without further service, if so desired by defendant, and that the defendant may plead the statute of limitations.

Enter.

F. H. H.,
J. S. C.

84

SUPREME COURT, 85

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE, and others,
Plaintiffs,

against 86

JOHN BOYD THACHER,
Defendant.

The issues in the above-entitled action having been brought on for trial at a Trial Term of the Supreme Court, held in and for the County of Onondaga, at the Court House in the City of Syracuse, on the 22d day of December, 1898, before Hon. Frank H. Hiscock, Justice of the said Court, and the issues having been duly tried by said Justice and the said case having been thereafter 87
submitted to the said Justice for determination as to both the law and the facts upon argument, both oral and written, by the attorneys for the respective parties.

Now, upon the issues of fact joined to said action and upon all the allegations and proofs of the respective parties and the argument of counsel, and due deliberation having been had thereon,

I do hereby find and decide the following conclusions as matters of fact and of law, viz.:

88 **Facts.**

I.—That during a period of many years prior to the year 1713, there existed a Confederacy of Iroquois Indians composed of the Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated in their own language as the Ho-de-no-sau-nee, but known and referred to in history as the League of the Five Nations.

II.—That thereafter and in or about the year 1713, another tribe known as the Tuscaroras was received into said Confederacy and thereafter the
89 League was known and referred to as the League of the Six Nations.

III.—That during the earliest period of the existence of said Confederacy, the Indians of which said League was composed made use of strings of wampum beads or shells braided or pleated together in broad bands and commonly known as wampum belts, as a means of commemorating and preserving the memory of important events such as the making of treaties, the coming of the white man, &c., and that while the League of the Iroquois was in active existence the tribes or members
90 thereof composing it employed this method of preserving the history of the events which they conceived to be of importance.

IV.—That while such custom was in vogue the care and custody of such wampum belts as were so used was entrusted to the Onondaga Nation, which appointed one of its members as an official sometimes designated as the "wampum-keeper" whose duty it was to preserve the same and upon ceremonial occasions expound them and emphasize their meanings and significance.

V.—That the wampum belts mentioned and de-

scribed in the complaint in this action constituted 91
a portion of the wampum belts at one time made
and possessed by the League and used for the
foregoing purposes.

VI.—That at a time many years prior to the
10th day of February, 1891, the ancient Confeder-
acy above referred to, composed first of the five
and then of the six tribes or nations of Indians
above mentioned, was dissolved and thereafter had
no active or actual existence. That its respective
names had become associated with a period long
gone by; that the tribes of which it consisted had
become separated, and to a large extent scattered 92
and dispersed throughout the United States of
America and the Dominion of Canada, and those
who had remained in this country had become
wards of the Government.

VII.—That on and after the happening of the
foregoing events, viz.: the dissolution and disrup-
tion of the said Iroquois Confederacy, the use of
the wampum belts for any of the foregoing pur-
poses for which they were originally prepared be-
came obsolete. The wampum thereupon became
nothing more than curiosities and relics of a time,
condition, and confederation which had ceased to 93
exist, and the office or position of wampum-keeper,
so far as its original significance is concerned, be-
came useless and was abrogated.

VIII.—That on the 10th day of February, 1891,
and for many years prior thereto, one Thomas
Webster, an Onondaga Indian, had become the
owner and was in possession of several of the
wampum belts above referred to, including those
enumerated in the complaint herein. That said
Webster was not then, and never was, an incum-
bent of the office or position of wampum-keeper of

94 the Onondaga Nation or of any of the individual tribes composing the Iroquois Confederacy, and that there was at that time no such official position known or recognized among the Indians composing any or either of said tribes or confederacy. That the individual and personal ownership of said Thomas Webster in said wampum belts was recognized by the said several tribes which formerly constituted said League and by the individual members thereof, and that said tribes and Indians had long prior to that time ceased to treat or regard said wampum belts as the property of either the Onondaga Nation or the Iroquois League.

95

IX.—That on or about the 10th day of February, 1891, the said Thomas Webster then being the individual owner and in possession of said several belts of wampum, in consideration of the payment to him of the sum of seventy-five dollars ($75), bargained, sold and delivered said wampum belts to one Henry B. Carrington.

X.—That thereafter, and in or about July, 1892, the said Henry B. Carrington in consideration of the payment to him of the sum of three hundred and fifty dollars ($350), bargained, sold and de-
96 livered said wampum belts to one Oliver Crane.

XI.—That thereafter, and on or about the 24th day of March, 1893, the said Oliver Crane, in consideration of the payment to him of the sum of five hundred dollars ($500), bargained, sold and delivered to said defendant, John Boyd Thacher, the said several belts of wampum described in the complaint, and the same have ever since remained in the possession of said defendant.

XII. That said purchase on the part of the defendant was made in good faith and as a matter of public spirit.

XIII. That prior to the commencement of this 97
action, neither the Onondaga Nation, the plaintiff (Te-hes-ha), the University of the State of New York, nor any of the other plaintiffs demanded of the defendant the delivery of either of the aforesaid wampum belts.

XIV. That the plaintiff Te-hes-ha has died since the commencement of this action and no personal representative or other person has been substituted in his place.

XV. That the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, 98
and that said University of the State of New York never was selected or "raised up" to the position or office of "wampum-keeper," and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed said Iroquois Confederacy for the purpose of conferring any such position or office upon said University of the State of New York, assuming that there is or was at the time of said alleged proceedings any such official position.

Law. 99

1. That on or about the 24th day of March, 1893, the defendant, for a valuable consideration, became the absolute owner of each and every of the wampum belts described in the complaint herein, and continued as such owner up to the time of the commencement of this action.

2. That a demand upon the defendant for the delivery of said belts was a necessary prerequisite to the commencement of the action. That no demand therefor was ever made upon the defendant by or in behalf of any or either of the plaintiffs herein.

100 3. That the plaintiff herein referred to as the Onondaga Nation has not the legal capacity to sue in the Courts of this State.

4. That the plaintiff herein referred to as the University of the State of New York, has no property right or other interest in the subject matter of this action sufficient to entitle it to bring an action for the recovery of any or either of wampum belts.

5. That there is no such identity and community of interest between the plaintiff Te-hes-ha, the other individual plaintiffs made parties to this action since the commencement thereof, and the
101 members of the several Indian tribes whose ancestors constituted a part of the League of the Five Nations and the League of the Six Nations, in having such wampum belts preserved and restored to some custodian as permits the maintenance of this action.

6. That the defendant, John Boyd Thacher, is entitled to a judgment dismissing the complaint herein together with the costs of this action.

7. That the injunction heretofore, and on the the first day of October, 1897, granted by the
102 Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court the belts of wampum described in the complaint, or any of them, should be and hereby is dissolved.

FRANK H. HISCOCK,
J. S. C.

SUPREME COURT. 103

THE ONONDAGA NATION OF INDIANS and others,
Plaintiffs,

against

JOHN BOYD THATCHER,
Defendant.

Plaintiffs' Exceptions. 104

The plaintiffs each separately except to the findings of the court as follows:—The court, in its decision made the following findings and each of the plaintiffs separately excepted as hereinafter stated:—

"VI. That at a time many years prior to the 10th day of February, 1891, the ancient confederacy above referred to, composed first of the five and then of the six tribes or nations of Indians above mentioned, was dissolved (to which each plaintiff separately excepted), and thereafter had no active (to which each plaintiff separately excepted) or actual existence (to which each plaintiff separately excepted. That its respective names had become associated with a period long gone by (to which each plaintiff separately excepted); that the tribes of which it consisted had become separated (to which each plaintiff separately excepted) and to a large extent scattered and dispersed throughout the United States of America and the Dominion of Canada (to which each plaintiff separately excepted) and those who had remained in this country had become wards of the Government (to which each plaintiff separately excepted). 105

106 VII. That on and after the happening of the foregoing events, viz.: the dissolution and disruption of the said Iroquois Confederacy (to which each plaintiff separately excepted), the use of the wampum belts for any of the foregoing purposes for which they were originally prepared became obsolete (to which each plaintiff separately excepted). The wampums thereupon became nothing more than curiosities (to which each plaintiff separately excepted) and relics (to which each plaintiff separately excepted) of a time, condition and confederation which had ceased to exist (to which each plaintiff separately excepted), and the office
107 or position of wampum-keeper so far as its original significance is concerned became useless (to which each plaintiff separately excepted) and was abrogated (to which each plaintiff separately excepted).

VIII. That on the 10th day of February, 1891 (to which each plaintiff separately excepted), and for many years prior thereto (to which each plaintiff separately excepted), one Thomas Webster, an Onondaga Indian, had become the owner (to which each plaintiff separately excepted) and was in pos-
108 session of several of the wampum belts above referred to, including those enumerated in the complaint herein (to which each plaintiff separately excepted). That said Webster was not then (to which each plaintiff separately excepted) and never was (to which each plaintiff separately excepted) an incumbent of the office or position of wampum-keeper of the Onondaga Nation (to which each plaintiff separately excepted) or of any of the individual tribes composing the Iroquois Confederacy (to which each plaintiff separately excepted), and that there was at that time no such official position known or recognized among the Indians composing

any or either of said tribes or confederacy (to which each plaintiff separately excepted). That the individual and personal ownership of said Thomas Webster in said wampum belts was recognized by the said several tribes which formerly constituted said league (to which each plaintiff separately excepted) and by the individual members thereof (to which each plaintiff separately excepted), and that said tribes and Indians had long prior to that time ceased to treat or regard said wampum belts as the property of either the Onondaga Nation or the Iroquois League (to which each plaintiff separately excepted). 109 110

IX. That on or about the 10th day of February, 1891, the said Thomas Webster then being the individual owner (to which each plaintiff separately excepted) and in possession of said several belts of wampum (to which each plaintiff separately excepted), in consideration of the payment to him of the sum of seventy-five dollars ($75) bargained, sold and delivered said wampum belts to one Henry B. Carrington (to which each plaintiff separately excepted).

X. That thereafter and in or about July, 1892, the said Henry B. Carrington, in consideration of the payment to him of the sum of three hundred and fifty dollars ($350), bargained, sold and delivered said wampum belts to one Oliver Crane (to which each plaintiff separately excepted). 111

XI. That thereafter and on or about the 24th day of March, 1893, the said Oliver Crane, in consideration of the payment to him of the sum of five hundred dollars ($500), bargained, sold and delivered to said defendant, John Boyd Thacher, the said several belts of wampum described in the complaint (to which each plaintiff separately excepted)

112 and the same have ever since remained in the possession of said defendant.

XII. That said purchase on the part of the defendant was made in good faith (to which each plaintiff separately excepted) and as a matter of public spirit (to which each plaintiff separately excepted).

XIII. That prior to the commencement of this action neither the Onondaga Nation (to which each plaintiff, separately excepted) the plaintiff Te-hes-ha (to which each plaintiff separately excepted) nor
113 any of the other plaintiffs demanded of the defendant the delivery of either of the aforesaid wampum belts (to which each plaintiff separately excepted).

XIV. That the plaintiff Te-hes-ha has died since the commencement of this action (to which each plaintiff separately excepted) and no personal representative or other person has been substituted in his place (to which each plaintiff separately excepted).

XV. That the University of the State of New
114 York never purchased any or either of the wampum belts mentioned and described in the complaint (to which each plaintiff separately excepted), and that said University of the State of New York never was selected or raised up to the position or office of wampum keeper (to which each plaintiff separately excepted), and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed said Iroquois confederacy for the purpose of conferring any such position or office upon said University of the State of New York (to which each plaintiff separately excepted), assuming that there is or was at the

time of said alleged proceedings any such official position (to which each plaintiff separately excepted). 115

Law.

1. That on or about the 24th day of March, 1893, the defendant for a valuable consideration became the absolute owner of each and every of the wampum belts described in the complaint herein (to which each plaintiff separately excepted) and continued as such owner up to the time of the commencement of this action (to which each plaintiff separately excepted). 116

2. That a demand upon the defendant was a necessary prerequisite to the commencement of this action (to which each plaintiff separately excepted). That no demand therefor was ever made upon the defendant (to which each plaintiff separately excepted) by or in behalf of any or either of the plaintiffs herein (to which each plaintiff separately excepted).

3. That the plaintiff herein referred to as the Onondaga Nation has not the legal capacity to sue in the courts of this State (to which each plaintiff separately excepted). 117

4. That the plaintiff herein referred to as the University of the State of New York has no property right or other interest in the subject matter of this action (to which each plaintiff separately excepted) sufficient to entitle it to bring an action for the recovery of any or either of said wampum belts (to which each plaintiff separately excepted).

6. That there is no such identity and community of interest between the plaintiff Te-hes-ha, the other individual plaintiffs made parties to this action since the commencement thereof and the members

118 of the several Indian tribes whose ancestors constituted a part of the League of the Five Nations and the League of the Six Nations in having such wampum belts preserved and restored to some custodian as permits the maintenance of this action (to which each plaintiff separately excepted).

6. That the defendant John Boyd Thacher is entitled to a judgment dismissing the complaint herein (to which each plaintiff separately excepted) together with the costs of this action (to which each plaintiff separately excepted).

119 7. That the injunction heretofore, and on the first day of October, 1897, granted by the Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court the belts of wampum described in the complaint, or any of them, should be (to which each plaintiff separately excepted) and hereby is dissolved (to which each plaintiff separately excepted). And each plaintiff excepted separately to the refusal of the court to find the following fact: "One of these wampums was used as the
120 "means of commemorating and preserving the "terms of the first treaty made between the "Ho-de-no-sau-nee and the United States of "America."

And to find this, "It was made in 1784."

EDWARD WINSLOW PAIGE,
Attorney for the Plaintiffs.

To the honorable JOHN A. DELEHANTY,
Attorney for the Defendant.

SUPREME COURT, 121

ONONDAGA COUNTY.

THE ONONDAGA NATION, TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the Ho-do no-sau-nee; UNIVERSITY OF THE STATE OF NEW YORK; SAY-HA-QUE, an Onondaga Indian; HOS-HAY-QUA, an Onondaga Indian; SHO-HEH-DO-NAH, an Onondaga Indian; HA-ON-WENGO-WENLE, an Onondaga Indian; JARVIS FARMER, an Onondaga Indian; HO-DO-OH-GO-AH, a Seneca Indian; and HA-JA-AH-GWYSH, a Cayuga Indian,

Plaintiffs,

against

JOHN BOYD THACHER,

Defendant.

122

Judgment 26th December, 1899.

123

This cause having been duly reached on the calendar in its regular order at a Trial Term of the Supreme Court, held in and for the County of Onondaga, at the Court House in the City of Syracuse, on the 22d day of December, 1898, before Hon. Frank H. Hiscock, Justice, and the allegations and proofs on the part of the plaintiffs and defendant having been duly heard and considered, both upon the law and the facts, and said Justice having after due deliberation determined that the defendant, John Boyd Thacher, is entitled to a judgment dis-

missing the complaint herein, together with the costs of this action, and having duly directed that said complaint be dismissed and judgment rendered for defendant accordingly,

Now, on motion of John A. Delehanty, attorney for said defendant, it is

Adjudged, that the plaintiffs' complaint be and the same is hereby dismissed upon the merits, and that the defendant, John Boyd Thacher, do recover of the above-named plaintiffs the sum of one hundred and sixty-nine dollars and twenty-eight cents ($169.28) costs and disbursements as adjusted by the Clerk of Onondaga County and that he have execution therefor. And it is hereby further

Adjudged, that the plaintiffs were not entitled to the injunction granted herein on the first day of October, 1897, by the Hon. Alonzo P. Strong, County Judge of Schenectady County, enjoining and restraining the defendant from disposing of, destroying, mutilating, injuring, concealing or removing out of the jurisdiction of this Court, the belts of wampum described in the complaint, or any of them, and that said injunction is hereby vacated and dissolved.

GEORGE J. YAECKEL,
Clerk.

SUPREME COURT, 127

ONONDAGA COUNTY.

THE ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf and also on behalf of all of the HO-DE-NO-SAU-NEE,

vs.

JOHN BOYD THACHER. 128

APPEARANCES:

For Plaintiff, EDWARD WINSLOW PAIGE.
For defendant, JOHN A. DELEHANTY.

Tried at a regular trial Term of the above Court, at the Court House in the City of Syracuse, Thursday, December 22d, 1899, before Hon. Frank H. Hiscock, Justice, presiding.

Mr. Paige: I will read in evidence from 129
Senate document No. 86 of 1894, being a report of the Board of General Managers of the World's Fair Columbian Exposition at Chicago, and signed by the defendant, as follows:

"When the Dutch settled New Amsterdam in "1614, they found a Republic in the wilderness "whose constitution and laws were free from com- "plications, which have so often led, among other "races, to conflict—a Constitution framed to pre- "vent political corruption, and which achieved, in "the hands of its founders, eminent success in "that important particular. The confederacy was

130 "in so complete a state when New York was
"founded that historians are justified in their con-
"clusions that it had been previously in success-
"ful operation for many years. The Iroquois
"were called the Five Nations, and included the
"following tribes: Mohawks, Onondagas, Sene-
"cas, Onedias and Cayugas. Their federal arms
"consisted of a bear, a deer, a wolf, a turtle, and
"a beaver.

"The original piece of wampum made to com-
"memorate the confederation of the five tribes,
"and which, therefore, antedates the Columbian
131 "discovery, is owned by Hon. John Boyd Thacher,
"of Albany, N. Y., and during the exposition was
"exhibited in the Government Building."

"The league (the above-named 'republic' and
"'confederacy' meaning) was a union of five
"tribes made up of clans, all forming one govern-
"ment, each tribe having local authority like our
"individual states. There was a general council
"of Sachems, fifty in number, of equal rank and
"authority. This council had supreme power in
"matters pertaining to the league. The fifty
"Sachems held office perpetually. They had
"power to fill vacancies in the clans by elections
132 "but only on the nomination of the eldest women
"of the clan. These Sachems could depose a
"chief for cause, but they could not invest a
"Sachem with office; the general council did that.
"The Sachems of any tribe, with the war chiefs of
"that tribe, formed the council of the tribe and had
"authority similar to that of a State Legislature."

"All public acts became so only by the unani-
"mous decision of the league. The Sachems voted
"by tribes in the general council; thus, a small
"tribe had as much power as a large one. The
"council of each tribe had power to convene itself.
"The orators of the people had perfect liberty to

"discuss public questions before the general coun- 133
"cil, but only the general council could render a
"decision. Such, in brief, are the characteris-
"tics of the famous league of the Iroquois."

"In the rotunda of the Government building
"were thirteen large panels which were at the dis-
"posal of the thirteen original States for a display
"of Colonial and historical relics and curios. New
"York's was especially attractive in interesting
"relics, owing to the broad and rich domain of
"early New York history and to the exertions and
"influence of Mrs. Jones, of the Board of Women
"Managers, and Mr. Thacher, of the Board of 134
"General Managers, in securing the loan of ar-
"ticles for the exhibition, and in bringing many
"famous mementoes from their hiding places."

"Prominent among the articles exhibited were the
"Washington relics from the State Library, auto-
"graphs of the Presidents and the Signers of the
"Declaration of Independence, original model of
"Fulton's 'Clermont,' and the wampum belt com-
"memorative of the first treaty and alliance of the
"Six Nations of New York, and now in the pos-
"session of Hon. John Boyd Thacher of Albany."

The Court: That is a report signed by the
defendant? 135

Mr. Paige: Yes, sir.

Mr. Paige: I now offer from Morgan's "The League of the Iroquois," published in Rochester in 1851, the following:

You will admit Mr. Morgan is dead?

Mr. Delehanty: I will, if you say so.

Mr. Paige: Yes.

"At the institution of the league fifty permanent sachemships were created, with appropriate
"names; and in the sachems who held these titles
"were vested the supreme powers of the confeder-
"acy. To secure order in the succession, and to

136 "determine the individuals entitled, the sachem-
"ships were made hereditary, under limited and
"peculiar laws of descent. The sachems them-
"selves were equal in rank and authority, and in-
"stead of holding separate territorial jurisdic-
"tions, their powers were joint, and co-extensive
"with the league. As a safeguard against con-
"tention and fraud, each sachem was 'raised up'
"and invested with his title by a council of all the
"sachems, with suitable forms and ceremonies.
"Until this ceremony of confirmation or investi-
"ture, no one could become a ruler. He received,
"when raised up, the name of the sachemship it-
137 "self, as in the case of titles of nobility, and so
"also did his successors, from generation to gen-
"eration. The sachemships were distributed un-
"equally between the five nations, but without
"thereby giving to either a preponderance of
"political power. Nine of them were assigned to
"the Mohawk nation, nine to the Oneida, fourteen
"to the Onondaga, ten to the Cayuga and eight to
"the Seneca. The sachems, united, formed the
"Council of the League, the ruling body, in which
"resided the executive, legislative and judicial
"authority. It thus appears that the government
"of the Iroquois was an oligarchy, taking the
"term, at least, in the literal sense, 'the rule of
138 "the few;' and, while more system is observable
"in this than in the oligarchies of antiquity, it
"seems also better calculated, in its framework, to
"resist political changes.

"This specimen of Indian legislation is so remark-
"able that a table of these sachemships, with their
"division into classes, indicating certain inter-
"relations, hereafter to be explained, is inserted
"in the Seneca dialect."

Then follows a list of fifty-one sachems. Second

on the list is Hiawat-ha of the Turtles of the Mo- 139
hawks.

"These titles or names were hereditary in the sev-
"eral tribes of which each nation was composed.
"When an individual was made a sachem, upon
"the death or deposition of one of the fifty, his
"name was 'taken away' and the name of the
"sachemship held by his predecessors was con-
"ferred upon him. Thus, upon the demise of the
"Seneca sachem, who held the title Ga-ne-o-di-yo,
"a successor would be raised up from the Turtle
"tribe, in which the sachemship was hered-
"itary, and after the ceremony of investiture, the 140
"person would be known among the Iroquois only
"under the name of Ga-ne-o-di-yo. These fifty
"titles, excepting two, have been held by as many
"sachems, in succession, as generations have passed
"away since the formation of the League.

"The Onondaga nation, being situated in a cen-
"tral position, were made the keepers both of the
"Council Brand and of the Wampum, in which
"the structure and principles of their government,
"and their laws and treaties, were recorded. At
"stated periods, usually in the autumn of each year,
"the Sachems of the League assembled in council
"at Onondaga which was in effect the seat of gov- 141
"ernment, to legislate for the common welfare.
"Exigencies of a public or domestic character often
"led to the summoning of this council at extra-
"ordinary seasons, but the place was not confined
"to Onondaga. It could be appointed in the terri-
"tory of either of the nations, under established
"usages. Originally the subject of the general
"council was to raise up sachems to fill vacancies.
"In the course of time, as their intercourse with
"foreign nations became more important, it as-
"sumed the charge of all matters which concerned
"the League. It declared war and made peace,

142 "sent and received embassies, entered into treaties
"of alliance, regulated the affairs of subjugated
"nations, received new members into the League,
"extended its protection over feeble tribes, in a
"a word, took all needful measures to promote
"their prosperity, and enlarge their dominion.

"Notwithstanding the equality of rights, priv-
"ileges and powers between the members of this
"body of sachems, there were certain discrimina-
"tions between them which rendered some more
"dignified than others. The strongest illustration
"is found in the Onondaga sachem, To-do-da-ho,
"who has always been regarded as the most noble
143 "sachem of the League. As an acknowledgment of
"his eminence, two of the Onondaga sachems were
"assigned to him as hereditary councillors.

"At the establishment of the League, an Onon-
"daga by the name of To-do-da-ho had rendered
"himself a potent ruler, by the force of his mili-
"tary achievements. Tradition says that he had
"conquered the Cayugas and the Senecas. It rep-
"resents his head as covered with tangled serpents,
"and his look, when angry, as so terrible, that
"whoever looked upon him fell dead. It relates,
144 "that when the League was formed, the snakes
"were combed out of his hair by a Mohawk sachem,
"who was hence named Ha-yo-went-ha, 'the man
"'who combs.' To-do-da-ho was reluctant to con-
"sent to the new order of things, as he would
"thereby be shorn of his absolute power, and be
"placed among a number of equals. To remove
"these objections in some measure, and to com-
"memorate his magnanimity, the first sachemship
"was named after him, and was dignified above
"the others by special marks of honor; but such,
"however, as were in perfect consistency with an
"equal distribution of powers among all the sachems
"as a body. Down to the present day, among the

"Iroquois, this name is the personification of hero- 145
"ism, of forecast, and of dignity of character; and
"this title has ever been regarded as more illus-
"trious than any other, in the catalogue of Iroquois
"nobility.

"To several other of these officers or names,
"particular duties were affixed at the institution
"of the League. For example: The Senecas were
"made the door-keepers of the Long House; and
"having imposed upon Do-ne-ho-ga-weh, the eighth
"sachem, the duty of watching the door, they
"gave to him a sub-sachem, or assistant, to enable
"him to execute this trust. This sub-sachem was 146
"raised up at the same time with his superior,
"with the same forms and ceremonies, and re-
"ceived the name or title which was created simul-
"taneously with that of the sachemship. It was
"his duty to stand behind the sachem on all public
"occasions, and to act as his runner or attendant,
"as well as in the capacity of a counsellor. Ho-
"ho-we-na-to, the Onondaga sachem who was
"made the keeper of the wampum, had also a sub-
"sachem, or assistant. Several other sachems, to
"whom special responsibilities were confided, were
"allowed sub-sachems, to enable them to fulfill
"their du ies, or perhaps as a mark of honor. All 147
"of these special marks of distinction were con-
"sistent with perfect equality among the sachems,
"as members of one ruling body, in the adminis-
"tration of the affairs of the League. When their
"method of legislating is considered, this fact
"will appear with greater distinctness."

"The laws explained at different stages of the
"ceremonial, were repeated from strings of wam-
"pum into which they 'had been talked' at the
"time of their enactment. In the Indian method
"of expressing the idea, the string, or the belt
"can tell, by means of an interpreter, the exact

148 " law or transaction of which it was made, at the
" time, the sole evidence. It operates upon the
" principle of association, and thus seeks to give
" fidelity to the memory. These strings and belts
" were the only visible records of the Iroquois;
" and were of no use except by the aid of those
" special personages who could draw forth the
" secret records locked up in their remembrance.
" It is worthy of note, that but little importance
" was attached to a promise or assurance of a
" foreign power, unless belts or strings were given
" to preserve it in recollection. Verbal proposi-
" tions, or those not confirmed by wampum, were
149 " not considered worthy of special preservation.
" As the laws and usages of the Confederacy were
" intrusted to the guardianship of such strings,
" one of the Onondaga sachems, Ho-no-we-na-to,
" was constituted 'Keeper of the Wampum,' and
" was required to be versed in its interpretation."

May I have the wampums?

Mr Delehanty: Yes. (Produces wampums.) I will object to the receipt of any evidence of the character that Mr. Paige is reading to the Court, on the ground that it is not a proper subject or matter for the Court to take judicial
150 notice of; on the further ground that it is incompetent, immaterial, irrelevant and inadmissible.

The Court: I will take your objection, but I won't rule on it now. When I come to consider the case, if I rule against you I will give you an exception, and if I rule against Mr. Paige I will give him an exception.

(Mr. Paige exhibits to the Court wampum belts).

Mr. Paige: I now read from the first volume of Clark's "History of Onondaga County,"

published in 1849. You will admit Mr. Clark 151
is dead?

Mr. Delehanty: I presume he is. I don't know anything about it. I will take your statement.

The Court: It may be admitted that he is dead.

Mr. Delehanty: The further objection that it is conceded on its face that this is simply a local history.

The Court: I suppose the matter itself will show that, probably.

Mr. Paige: It is a history of the whole 152
Onondaga Nation.

"Os-sa-hin-ta, Captain Frost—This distin-
"guished chief of the Onondagas, who presided
"with great ability over the councils of the nation
"from 1830 to 1846, possessed a character and a
"name, which eminently deserves to be remem-
"bered. He was a cousin of the celebrated Oun-
"diaga, and a nephew of Kawhictoda. He was
"distinguished for the nobleness of his character,
"the peculiar fervidness of his eloquence, and his
"unimpeachable integrity—qualities which se-
"cured for him the unlimited confidence of his
"nation. His most distinguished associates have 153
"been Oh-he-nu (Captain Hannos), Oh-ka-a-yunkg
"(Onondaga Peter), Ka-ha-yent (Captain Joseph),
"O-gha-ta-kak (Captain Joseph 2d), *De-hat-ka-tons*
"(*Abram La Fort*), *and Ut-ha-wah* (*Captain*
"*Cold*). *This latter for a long time was keeper*
"*of the council fire of the Six Nations.*"

"The ancient Council-Fire of the Confederate
"Nations, from time immemorial, had always been
"kept alive at Onondaga, the central nation of the
"Confederacy. After their alliance with the Eng-
"lish in 1665, the fires of the United Councils of
"the two powers were kindled at Albany, and

154 " there, according to the figurative manner of
" Indian expression, was planted the great tree, to
" which was fastened the chain of friendship.
" With the close of the great council of 1775, that
" fire, which had so long kept burning, was ex-
" tinguished. It was the last Indian council held
" at the ancient Dutch capital. The great Council-
" Fire of the Six Nations was still kept alive at
" Onondaga till after the close of the revolution-
" ary war, at which time a portion of the Ononda-
" gas took up their abode on the Buffalo Creek
" Reservation, under the protection of the Senecas,
" and there was established the Council-Fire of the
155 " Six Nations. The Council-Fire was kept by
" Ut-ha-wah (Capt. Cold), an Onondaga, and the
" Senecas appropriated a mile square of land on
" their reservation, as a mark of distinction to the
" chief who kept it. Efforts have often been made
" by the Onondagas at home, to have the council-
" fire restored to its ancient hearth, but always
" without success until the Fall of 1847. The On-
" ondagas and Senecas on the Buffalo Reservation,
" seeing that their lands were like to pass from
" them, and thereby their removal become inevit-
" able, after the death of Capt. Cold, resolved to
156 " restore the sacred deposit to its ancient site.

" We would here remind the reader that what is
" termed the council-fire, is not, as is by many
" supposed, an actual fire, kept constantly burn-
" ing, but the place where their national records
" are kept, and belts, the memorials of treaties,
" deposited and preserved, and as such, the term
" is only used in a figurative sense. It is the place
" where all the national councils assemble, and
" where is retained the spirit and essence of their
" ceremonies and institutions. Important Indian
" councils are often held without actual fire.

" De-hat-ka-tons was at this time chosen keeper

" of the council-fire of the Six Nations. *These* 157
" *archives consist of various belts of wampum,*
" *some twenty-five or thirty in number, which the*
" *author has had the satisfaction of seeing (a*
" *sight rarely allowed a white man), with expla-*
" *nations from the keeper. Here is shown a belt,*
" *sixteen inches broad, by four feet long, repre-*
" *senting the first union and league of the Five*
" *Nations, and is called the 'Carpet' foundation*
" *or platform, or as we may better understand it,*
" *the constitution; literally, something to stand*
" *upon.*".

That is the belt that is in controversy in this 158
case (indicating).

Now if your Honor will look at the other belt while I read: " *The several nations are dis-*
" *tinguished by particular squares, and these are*
" *joined together by a line of white wampum, and*
" *united to a heart in the centre, implying the*
" *union of hand and heart as one. In connection*
" *with this is a second belt*"—if your Honor will look at that (indicating), " *having the figures of*
" *several chiefs wrought in the wampum, all hold-*
" *ing hands in a circle, which is to represent that*
" *there shall be no end to this league.*"

" *On one end is figured the Long House*"—my 159
claim is that he described these two belts by what I have just read—" *the great Cabin, which no*
" *new nation can enter until it has erected some*
" *little cabins around it; that is, the nation must*
" *perform some deeds worthy of note before it can*
" *be entitled to admission to the Great League in*
" *the Federation. Around this are five smaller*
" *cabins, emblems of the original Five Nations,*
" *before the league was formed, and on one side*
" *is a still smaller one, wrought since the first,*
" *representing the Tuscarora Nation, which was*
" *admitted at a subsequent period. Another long,*

160 *narrow belt*"—I ask your Honor to look at that belt—"*having a cross at one end and a long house* "*at the other, a narrow white stripe connecting* "*the long house and a large cross, was explained* "*as follows: 'Great many years ago,' a company* "*from Canada presented this belt, desiring that* "*missionaries, from the Roman Catholic Church,* "*might be settled among the Five Nations, and* "*erect a church at Onondaga, and that the road* "*should be continually kept open and free be-* "*tween them.*"

That would make it about 1646.

161 "*All the other belts were explained with par-* "*ticular minuteness.*

"*The bag which contains these relics is of itself* "*a singular curiosity. It is made of the finest* "*shreds of elm bark, and a person without being* "*apprised might easily mistake it for the softest* "*flax. Its capacity would exceed a bushel. This* "*bag is reputed to be as old as the league itself,* "*and certainly bears the marks of great an-* "*tiquity.*

"*The tubes or beads of wampum are of red,* "*dark blue, pale blue, black and white colors,* "*made of conch shell. They are about five-*
162 "*eighths of an inch long, about as large as a small* "*pipe-stem, and hollow, strung, woven and* "*wrought with sinews of deer and bark.*

"*The whole, to say the least, is a great cu-* "*riosity, and has undoubtedly been handed down* "*from a remote period. It is held as a sacred* "*treasure, preserved with great care, and looked* "*upon with peculiar reverence.*"

The Court sustained the objection as to the parts in italics and admitted the rest.

Mr. Paige excepted.

JOHN S. CLARK, sworn for plaintiff: 163

Examined by Mr. Paige:

Q. Your residence, Genera'? A. Auburn, this State.

Q. You have devoted much time in your life to Indian antiquities and to the establishment of sites of Indian villages? A. I have.

Q. Did you at any time see the wampum belts at Onondaga; if so, when and under what circumstances? A. I first saw the wampum belts in 1878 or '79. I visited their reservation in company with Horatio Hale, of Canada. They were explained at 164
that time to Mr. Hale and myself. I then secured permission at some future time to take a photograph of the belts. I think in January, 1879, or in January, 1880, I visited the Onondaga Reservation at the time of the burning of the white dog, in company with Mr. Spuyer, of Auburn, who is a professional photographer. After the ceremonies of burning the dog, we went to the house of Chief Harry Webster—I didn't know his given name; I always knew him by the name of Chief Webster. I can describe him. He was an oldish man at that time, I think about seventy years old; tall, reticent; he didn't like to speak English 165
much, but could understand it well. The belts then were in a sack or bag of Indian manufacture, and kept under his bed. He took them out, pinned them up on a white sheet and took a small photograph, a copy of which I sent to you at one time. This is one of the photographs (indicating), and underneath is a second one.

(Marked Exhibit 3. F. J. M.)

Q. Exhibit 3, containing two photographs, are the photographs of the wampum belts in question? A. Yes, sir. At that time a copy of the photograph was sent to Washington by Dr. Beauchamp,

166 of Baldwinsville, from which engravings were made, which appear in the second volume of the Annual Report of the Bureau of Ethnology.

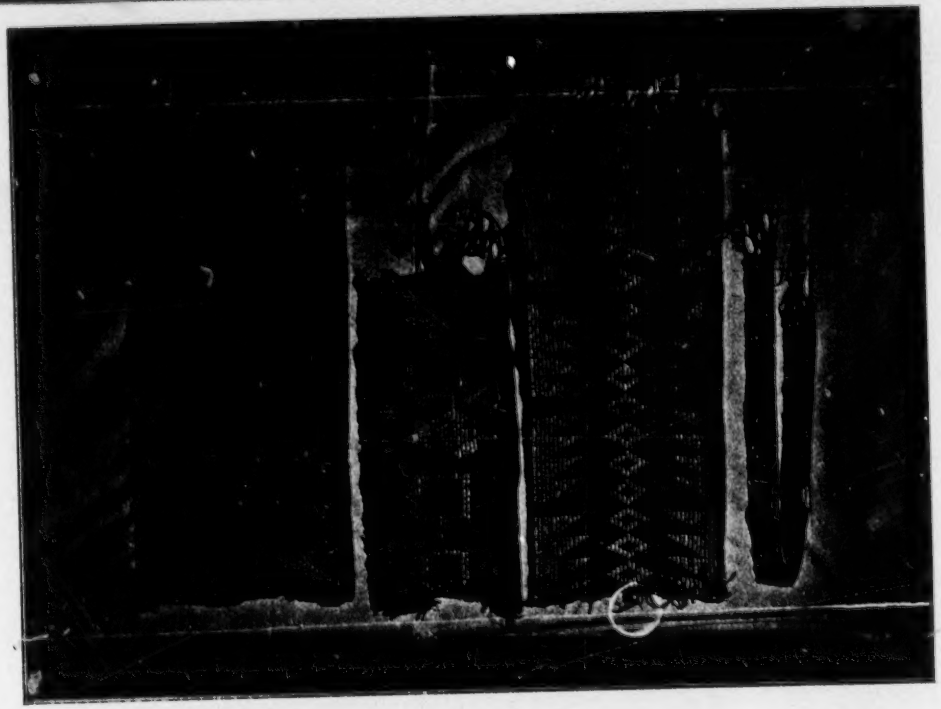
(Volume marked Exhibit 4, F. J. M., for identification.)

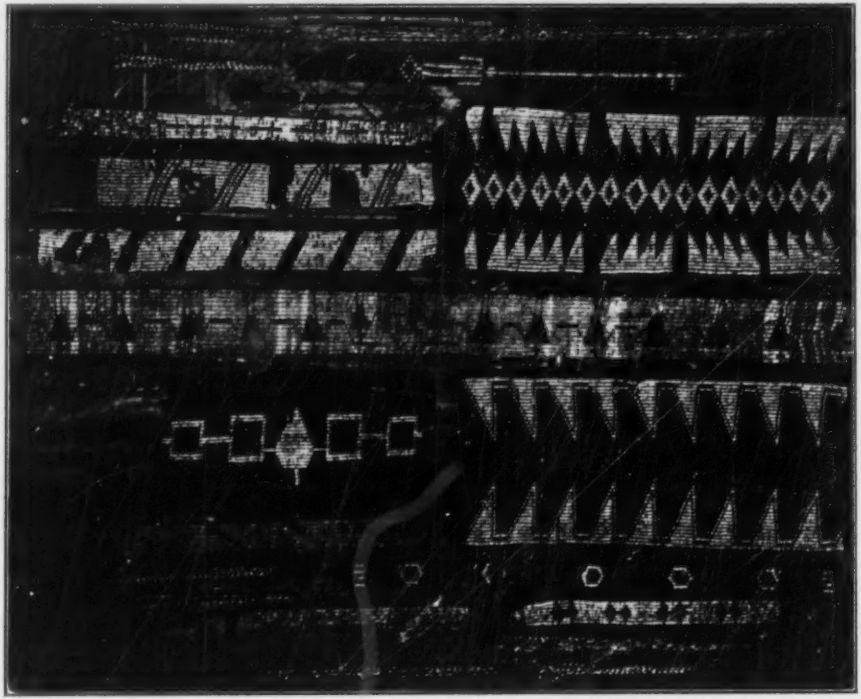
Q. Is that the volume which you have just described, Exhibit 4? A. Yes, sir; that is the volume. That is one of the belts facing page 240; facing page 244 are three other of the belts; facing page 248 is another of the belts; facing page 252 is another one, and facing page 254 are strings of wampum. They were put in different shapes and were made up at Washington from that photo-
167 graph.

Mr. Paige: I will offer Exhibit 3 and the photographs from Exhibit 4 in evidence.

Exhibit 3.

168





The Witness: I was not entirely pleased with those photographs, and I made an arrangement with Chief Daniel La Forte that Chief Webster should meet me at Syracuse, I think at the Vanderbilt House, and take photographs again of the same belts, which were brought there by Chief Webster. In this case they all appear upon a single sheet. (Producing photograph.) 169

(Marked Exhibit 5, F. J. M., for identification.)

Q. Is Exhibit 5 that photograph? A. That is the photograph. The belts that appear upon this photograph are the same as I have described previously. 170

Mr. Paige: I will offer Exhibit 5 in evidence.

Exhibit 5.

171

172 *By Mr. Paige:*

Q. What is the date of this second taking of the photograph? A. I think it was in 1880.

Q. This last photograph? A. Yes, sir.

Q. Were you told what was Chief Webster's official position? A. Yes, sir.

Mr. Delehanty: I object to that on the ground that it is incompetent, immaterial and irrelevant; that the witness has not been shown to have sufficient knowledge to know anything about what his official title was; it is simply hearsay.

173 The Court sustained the objection.

Mr. Paige excepted.

Q. What were you told was his position? Same objection. A. Wampum keeper; keeper of the wampum.

Q. By whom were you told that? A. Chief Daniel La Forte and Mr. Alfred Cusick, who was the interpreter at the time.

Q. Did he hold any official position? Was he a chief? A. I don't know, except by reputation. He was there and Daniel La Forte was there.

Q. What was Cusick by reputation? A. I think he was official interpreter.

174 Q. Anybody else?

Mr. Delehanty: I move to strike out the answer on the ground that it appears that the statements were made to him by two gentlemen who are still alive.

The Court: Evidence stricken out. Exception.

By Mr. Paige:

Q. Anybody else? A. Not that I remember now by name.

Q. Anybody whom you don't remember by name? Did you hear it otherwise? A. Yes, sir.

The Court: I will take all this evidence under the objections already made, and subject to a motion which may be made hereafter to strike it out. 175

By Mr. Paige:

Q. So far as you can remember, who were the remaining persons? A. The only ones I remember is Daniel La Forte and Mr. Cusick.

Q. But you do remember you heard it through other persons? A. Yes, sir.

Q. At Onondaga? A. At Onondaga Castle.

Evidence out.

Exception. 176

Q. Were any wampums read to you? A. They were explained to myself and Mr. Hale of Canada, principally by Daniel La Forte.

Q. Is that one of those wampums?

Mr. Paige: I show the witness the large wampum In the lower right-hand picture preceding page 473 of Exhibit 1.

The Court: That is the large dark one?

The Witness: That is the one I saw at that time.

By Mr. Paige: 177

Q. What was the reading given of that? A. That it was made at the formation of the League representing the Five Nations united together by white lines through the central part of the nations.

The Witness: It was given by Daniel La Forte in person. I don't know what authority he had.

Mr. Delehanty: I make the additional objection that Daniel La Forte is still alive and is one of the plaintiffs in this action. It is not the best evidence.

The Court: All right.

178 *By Mr. Paige:*

Q. Was that reading given by Daniel La Forte in the presence of Webster? A. Yes, sir.

Q. I now show you another wampum, which is the upper one upon the same diagram of Ex. 1. Is that one of the wampums? A. It is; yes, sir.

Q. Which you saw upon all three of those occasions? A. Yes, sir.

Q. Was the reading of that wampum given you? A. Yes, sir.

Q. What was it? A. This was represented to be the belt that was made at the first treaty of the
179 Five Nations with the general government at the time of the Revolutionary War, in which the thirteen states are represented by human figures and the Five Nations are represented in the centre. The thirteen states represented as holding hands and connected with the central figure, who was To-do-da-ho, I suppose. I took no notes at the time. I depend upon recollection.

Q. I show you another wampum, which is the one just below the big piece upon the diagram already mentioned, Ex. 1. Is that one of the wampums you saw upon those three occasions? A. Yes, sir.

180 Q. Do you remember the reading of that wampum? A. I do not.

Q. I show the witness another wampum, which is the fourth wampum represented upon the same diagram of Ex. 1. Is that one of the wampums you saw upon that occasion? A. Yes, sir.

Q. Do you remember the reading of that wampum? A. I do not. It has changed considerably from what it was then. A good many beads were lost. But this particular rent or tear was in it at the time, I remember, or that—or both. I think both of them were.

Q. The rents near the two ends? A. Yes, sir.

Cross-examination by Mr. Delehanty: 181

Q. Daniel La Forte is still alive, is he not? A. I think he is, sir.

Mr. Paige: He is dying.

Q. He resides on the Onondaga Reservation? A. He did all the time I have known him.

Q. In this County? A. Yes, sir.

Q. Do you know whether Mr. Cusick is still alive? A. I presume so; I have not heard of his death. I have not seen him in fifteen years.

Q. Do you know the Indian name of Daniel La Forte? A. I do not.

Mr. Delehanty: I presume it will be conceded that he is the person referred to in the title as the plaintiff Te-hes-ha? 182

Mr. Paige: I would rather not concede it, but you may prove it.

It is admitted that both Harry Webster and Thomas Webster are dead, and that Thomas Webster was the son of Harry Webster, and that Thomas Webster died the 3d of July, 1897.

I will offer in evidence minutes of a Council held by the Onondagas on the 26th of Febuary, 1898.

You do not object on the ground that the signatures are not proved? 183

Mr. Delehanty: No. I will admit that is a genuine document, and the genuine signatures are there.

184 REGENTS MINUTES, 22 March, 1898

ACTION OF ONONDAGA CHIEFS

At a council of the Onondaga nation held at the house of Daniel La Forte in Onondaga on the 26th day of February 1898 held pursuant to call and notice given to all the chiefs.

Present

Te-hes-ha	Daniel La Forte, *president*	
Say-ha-que	Baptist Thomas, *treasurer*	
Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*	
185 Ha-say-gwa-e-say	Jacob Skenandoah	*sachems and chiefs*
So-day-qua-scum	Asa Wheelbarrow	
Sa-da-qua-seh	Jacob Bigbear	
Ha-e-ho	Levi Webster	
O-gayis-qua	John Farmer	
Ho-yo-ne-a-ne	William Webster	
Ga-na-ha-guh-yat	Wallace Carpenter	
Ha-wen-jo-wah-e	Enoch Skenandoah	
Hos-hay-qua	Charles Lyon	

The following resolutions were unanimously adopted.

Resolved, That the University of the State of New York be and it hereby is elected wampum keeper of the Onondaga nation, with full power
186 and it shall be its duty to get possession of and safely keep forever all wampums of the Onondaga nation and the Five nations and Six nations and each of them.

Whereupon the University of the State of New York was unanimously elected to the office of wampum-keeper.

The following resolution was also unanimously adopted:

Resolved, That the Onondaga nation does hereby sell to the University of the State of New York all wampums for $500, and that the sachems and

chiefs present all execute a bill of sale for the nation. 187

A true copy from the minutes

Say-ha-que	Baptist his x mark Thomas
Sa-da-qua-seh	Jacob his x mark Bigbear
Ha-wen-jo-wah-e	Enoch Scanandoah
Ha-say-gwa e-say	Jacob A. Scanadoah
Ha-e-ho	Levi his x mark Webster
Ho-yo-ne-a-ne	William his x mark Webster
O-gayis-qua	John R. Farmer 188
Ga-na-ha-guh-yat	Wallace his x mark Carpenter
So-day-qua-scum	Asa his x mark Wheelbarrow
Ah-wa-ga-yat	Orris Farmer
Te-hes-ha	Daniel La Forte
Hos-hay-qua	Charles Lyon

In presence of
Harriet Maxwell Converse
A. G. Richmond
Edward Winslow Paige

KNOW ALL MEN BY THESE PRESENTS that the Onondaga nation does hereby sell, assign and transfer and set over unto the University of the State of New York all wampums, in belts, strings or otherwise, of which it ever had possession or was entitled to the possession of, and all its right, title and interest to any and all wampums anywhere, in consideration of $500. 189

And it is hereby made the attorney in fact of the Onondaga nation and the individual sachems and chiefs who are here, irrevocable, but at its own cost and expense, to recover the possession of the said wampums by suit or otherwise in the name of

190 the Onondaga nation or of any or all of the sachems and chiefs undersigned either as such sachems and chiefs or individually.

WITNESS the hands of the said undersigned sachems and chiefs and seals individually and the Onondaga nation by its secretary, in pursuance of a resolution of its grand council adopted on this 26th day of February, 1898.

THE ONONDAGA NATION

by

O-yah-ge-wick	Orris Farmer, *secretary*	(seal)
Say-ha-que	Baptist his x mark Thomas	(seal)
191		
Sa-da-qua-seh	Jacob his x mark Bigbear	(seal)
Ha-wen-jo-wah-e	Enoch Scanandoah	(seal)
Ha-say-gwa-e-say	Jacob A. Scanadoah	(seal)
Ha-e-ho	Levi his x mark Webster	(seal)
Ho-yo-ne-a-ne	William his x mark Webster	(seal)
O-gayis-qua	John R. Farmer	(seal)
Ga-na-ha-guh-yat	Wallace his x mark Carpenter	(seal)
So-day-qua-scum	Asa his x mark Wheelbarrow	(seal)
192		
O-yah-ge-wick	Orris Farmer	(seal)
Te-hes-ha	Daniel La Forte	(seal)
Hos-hay-qua	Charles Lyon	(seal)

In presence of
Harriet Maxwell Converse
A. G. Richmond
Edward Winslow Paige

That is signed by the twelve chiefs and three witnesses.

I will read in evidence the following bill of sale:

KNOW ALL MEN BY THESE PRESENTS that the ONONDAGA NATION does hereby sell, assign and

transfer and set over unto the UNIVERSITY OF THE STATE OF NEW YORK all wampuns in belts, strings or otherwise, of which it ever had possession or was entitled to the possession of, and all its right, title and interest to any and all wampums any where, in consideration of five hundred dollars. 193

And it is hereby made the attorney in fact of the Onondaga Nation and the individual sachem chiefs who are here, irrevocable, but at its own cost and expense, to recover the possession of the said wampuns by suit or otherwise in the name of the Onondaga Nation, or of any or all of the sachem chiefs undersigned, either as such sachem chiefs or individually. 194

Witness the hands of the said undersigned sachem chiefs and seals individually, and the Onondaga Nation by its Secretary, in pursuance of a resolution of its Grand Council, adopted on this twenty-sixth day of February, one thousand eight hundred and ninety-eight.

THE ONONDAGA NATION,
by
O-yah-ge-wick,
Orris Farmer,
Sec Nation (seal)

195

Say-ha-que	his mark Baptist x Thomas	
Ta-yet-qua-say	his mark Jacob x Bigbear	(seal)
Ha-wen-jo-wah-e	Enoch Scanandoah	(seal)
Ha-say-gwa-e-say	Jacob A. Scanadoah	(seal)
Ha-he-nun	his mark Levi x Webster	(seal)
O-gnun-ne	his mark William x Webster	(seal)
O-gayis-qua	John R. Farmer	(seal)
Ga-na-ha-guh-yat	his mark Wallace x Carpenter	(seal)
So-day-qua-scum	his mark Asa x Wheelbarrow	(seal)

196	O-yah-ge-wick	Orris Farmer	(seal)
	Te-hes-ha	Daniel LaFort	(seal)
	Hos-hay-qua	Charles Lyon	(seal)

In presence of:

HARRIET MAXWELL CONVERSE,
A. G. RICHMOND,
EDWARD WINSLOW PAIGE.

It is admitted that Say-ha-que and Hos-hay-qua, two of the plaintiffs whose names have been added to the title in this case, are persons who signed both papers.

And that Te-hes-ha has also signed these
197 papers. And it will appear that Te-hes-ha and Daniel La Forte are the same person.

Mr. Paige: I don't make that last admission, but the papers show it.

I will put in from the record book of the Onondaga Nation the constitution with which the Nation is at present governed. I will have a copy sent to the stenographer. That will be Ex. 8.

PLAINTIFF'S REST.

Mr. Paige: I would like to, if Mr. Delehanty will allow it, make a statement as to
198 Daniel La Forte's condition of health.

Mr. Delehanty: Yes.

The Court: To be taken as evidence?

Mr. Paige: Yes, sir. He is unable either to stand up or lie down; he has to sit in a chair continually; he is not expected to live more than a few days, possibly a week or two.

Mr. Delehanty: I don't object to the statement as to the form of it; but I object to it on the ground that it is immaterial. If Mr. La Forte is ill, his testimony could have been taken and produced here before us.

Mr. Paige: But it cannot be done now.

(Mr. Delehanty states the case to the Court in behalf of the defendant.)

Mr. Delehanty: I offer in evidence the three letters written by Melvil Dewey set up in the answer, which I will show to the Court. I will not stop to read them. They were written by Melvil Dewey to John Boyd Thacher, in response to which the letters set up in the complaint as having been written by Mr. Thacher were written. They appear in the answer which will be submitted to the Court.

The Court: These letters are set out in full in the answer?

Mr. Delehanty: Yes, sir.

The Court: They may be deemed in evidence.

Mr. Delehanty: I offer the deposition of Gen. Henry B. Carrington.

Mr. Paige: Shall we make the same stipulation in regard to General Clark's testimony that we made in regard to Gen. Carrington's, that it may be used in all other cases?

Mr. Delehanty: Yes.

Mr. Paige: The same stipulation that is made at the beginning of Gen. Carrington's deposition?

Mr. Delehanty: Yes.

The Court: That is not important in this suit.

Mr. Delehanty: Not at all.

Mr. Paige: The deposition carries with it the two reports?

Mr. Delehanty: Yes.

The Court: They may be deemed in evidence.

(Print the deposition and attached letters and such parts of the report as plaintiffs want. The whole report to be used on argument if either party desires.)

202 DEPOSITION.

NEW YORK, Nov. 30th, 1898.

Testimony taken at No. 44 Cedar Street, N. Y., on behalf of the defendant.

Appearances:

EDWARD WINSLOW PAIGE, for Plaintiffs,
JOHN A. DELEHANTY, for Defendant.

It is stipulated and agreed that the deposition of Henry B. Carrington, now to be taken, may be read in evidence from the stenographer's transcript,
203 upon the trial of this action, or of any other action brought to recover the same wampums that are at controversy in this action

HENRY B. CARRINGTON, called on behalf of defendant, testified as under oath as follows:

Examined by Mr. Delehanty:

Q. You are an officer of the United States Regular Army? A. Yes, sir.

Q. And what is your official title? A. I have two; General in the Volunteer Army and Colonel in the United States Army, retired.

204 Q. Where do you reside? A. Hyde Park, Mass.

Q. Are you the same person mentioned by the name of Carrington in the complaint in this action who is alleged to have sold to the Rev. Dr. Oliver Crane certain belts of wampum that are described in the complaint? A. Yes, I am.

Q. Are you familiar with the history, tradition and customs of the Iroquois Indians, formerly known as the League of Five Nations and thereafter as the League of Six Nations? A. As far as any published books of fact or tradition, and personal inquiry with every responsible Indian living among the Six Nations in 1890 could inform me.

Q. Are you the author of the article or report on 205
the condition of the New York State Indians, published in the Indian Volume of the 11th Federal Census? A. The report in said Volume is insufficient and is not an accurate copy of my official report to the government. I have a duplicate manuscript report as made to the government and the same was carefully printed and is a part of a Special Bulletin, but in the transfer of the Indian Branch of the Census Bureau from Superintendent Porter to Commissioner of Labor Wright, said Wright claimed as his prerogative to edit the large volume. After it had been printed and I had 206
elaborately indexed every report from every Indian Agent and every Census Agent of all the Indians of the United States, in this re editing a dispute arose between said Wright and Thomas Donaldson, in charge of the Indian Census, and as a result of the dispute Mr. Wright eliminated much matter, abbreviating, especially, that regarding the Six Nations. My report, however, had already been printed as a Special Bulletin by the Interior Department, and that is my true report, afterwards condensed into the large volume. In other words, the so-called report contained in the volume that I have referred to is a condensation from my official 207
report.

Q. The maps that appear in that report were made by you, or under your supervision? A. My own surveys; my own drawings.

Q. What authority did you have for making the investigation that you did prior to the preparation of your report; in what capacity, in other words, did you go—what official capacity, if any? A. Well, my large experience while in command of the Rocky Mountain Department, in opening the first wagon route to Montana amid hostilities and my familiarity with the language and customs of

208 the Indians beyond the Mississippi; many years of laborious study into the antecedents of the North American Indians, including the Six Nations in Canada and America, induced the government to ask me that I take charge of the Indian Census east of the Rocky Mountains and as far south as Louisiana. Other engagements rendered it necessary for me to limit the scope of the proposition made and I did prosecute the work among the Six Nations of New York and the Cherokees of North Carolina. In New York State I was occupied ten months continuously. I visited and located every
209 family, as will appear from maps in my report as published by the government drawn by me.

The Special Bulletin, to which reference is made above, is marked by the stenographer as Exhibit A.

Q. Did you make any special investigation at that time to ascertain if any wampums, or belts of wampum, had been preserved by any of the Indians or persons constituting the tribes that are referred to as the Six Nations? A. My orders from Washington instructed me to make the most thorough examination possible, especially among old men and women, of every manner of tradition or relic
210 that reflected light upon their antecedent history, and to secure from any chance of loss, if possible, anything that would contribute to the general knowledge regarding the Iroquois Confederacy and its members. Among the Allegany Senecas on the Cattaraugus Reservation, by special permission, I attended their pagan dances and festivals during the Winter of 1890–91 and with an interpreter interrogated all the old men and women, I think without exception, as to the traditionary history of their people. At the close of one pagan dance I secured a turtle rattle used in the ceremony. I also secured, from time to time, some leggings and

other curios, but in no case could I find, either among the pagan element, which alone cherished these old relics, or among the Christian element, so called, any wampum whatever. I attended the council at their court house, called upon very special matters vital to the land titles of the Seneca Indians, and made an appeal to the chiefs there represented to hunt up for my record anything, whether of wampum, silver ornament or other old things, that would aid me in an intelligent recital of their old history. In the matter of wampum, several of the Indians told me that Mr. Bryant, of Buffalo, could give me better information as to old relics than any white man, and that Thomas Webster, of Onondaga, who had spent a good deal of time in collecting old relics, wampums particularly, could also, perhaps, aid me. I went into Buffalo the next day, saw Mr. Bryant and he showed me a wampum for which he had paid $25, only several days before, during a visit in Canada, naming the chief, who had three or four more; but as they were getting very scarce he did not think he would sell them. 211 212

Among the Allegany Senecas, whose reservation centres about Salamanca, there was absolutely no knowledge whatever of the existence of any wampum, except that Andrew John, then president, told me he did not believe I would ever be able to get any, unless I could get them from Thomas Webster, of Onondaga, who used to have quite a collection. Among the Tonawanda Senecas, near Akron, I found several very aged pagan Indians, but no relics of very considerable relation to the past. The Tuscarora Indians had nothing of the kind. Mrs. Caroline Mountpleasant, the Peacemaker queen, and sister of Colonel Parker, of General Grant's staff, with whom I spent a week and had several interviews, endeavored with me to 213

214 hunt up wampums or other documentary matter, if possible, on the reservation. Nothing could be found in the way of wampums and my report will show how much tradition I was able to procure. She accompanied me to several of the old families. Mr. Johnson, called the historian of that tribe, equally failed to secure other data than that embraced in my report.

Among the Saint Regis Indians, representative of the old Mohawk stock, I found that their traditions, so far as preserved, chiefly centred about the settlement founded by Saint Regis, the French Jesuit, and the antecedents of the Tarbell family,
215 whose first representatives had been stolen from Groton, Mass., during the Indian invasion from Canada. I visited the grandson, a very old man, survivor of the Tarbell chiefs, taking with me a photograph, which is in the Bulletin marked "A," next after page 32, entitled "Reading the Wampums, 1890." I thought I had reached the fountain-head of inquiry as to wampums, but found none of the wampums exhibited in that photograph, being informed that all belonged on the Canadian side of the river and were owned by Indians there. Several of the old men told me that Thomas Web-
216 ster, of Onondaga, came almost every year to visit their pagan festivals and had several very good wampums; that the Canadian Indians had refused to sell any more of their wampums and that unless I could get some from Webster they did not know where I could get any.

Q. Did you make any investigation among the Indians in Canada in regard to the question of whether they had any wampums in their possession, further than your statement? A. I made application to Indians three different times; I sought three different times to get some, but they refused to sell.

Q. Did you see any wampums there? A. No, 217
sir; never saw any there.

Q. Do you remember the Indians that you interviewed on the subject; do you remember who they were? A. I wrote very full daily letters home, which I intended for binding, but they were destroyed by the burning of my house.

Q. Did you go among the Cayugas or the Oneidas for the purpose of discovering whether they had any wampums? A. As far as the Oneidas and Cayugas are concerned, I visited a few families, but they have hardly legal status, having formally sold their lands in New York and gone to the 218
West.

Q. Did you visit the Onondaga Nation or Tribe? A. At the Onondagas I found no relics of value until I called with President La Forte upon Thomas Webster to verify references made to him as the possessor of wampums. It was twice or three times of calling before the old man would show me the wampums——

Q. When you say the "old man," you refer to Thomas Webster? A. Yes, sir; I was at the time occupying the house of Chief La Forte with my secretary. I told him of my inquiries made elsewhere and he said that he would secure me 219
access to Webster's collection; that some of them he had a good many years, and he claimed that upon examining them he could read the ancient history of the Six Nations. He said, "Perhaps he will spare you one or two. No one has any interest in them now except himself, and he keeps them as relics of old times." He went to Webster and brought an old valise, very dilapidated, and tied with a rope, which had been under his bed, and we examined the wampums together. A large number of beads were loose and he gave what, as far as he could, was his idea of the original mean-

220 ing of the wampums. I impressed upon him as well as I could the importance of their being safely preserved somewhere and that if he chose to have me take charge of them, or any of them, I would guarantee that, either at Washington or elsewhere, in some safe place, they would be carefully and permanently preserved. After some reluctance he consented to come into Syracuse and bring the valise and give me permission to have photographs taken.

Mr. Paige: This is Webster? A. Webster.

(Witness continuing) I did this so that in case
221 he declined to sell any to the Government I would at least preserve the appearance of them. He entrusted me with the valise, returned to the Reservation, I had them photographed and returned them to him.

Mr. Paige: Is the picture, to face page 33 of the Bulletin, entitled "Historic Wampums —Six Nations," a copy of those photographs? A. The photographs in Bulletin, opposite page 33, entitled "Historic Wampums—Six Nations," are prints from those plates.

Q. And they include all of the wampums that he had? A. Yes, sir; that is all the
222 wampums that were in the valise.

Q. That engraving represents all the wampums that were in the valise? A. Yes, sir.

Q. And one of them is pictured twice, being the lower one on the lower right-hand picture? A. Yes, sir.

(Witness continuing) Shortly after Chief La Forte told me that Webster would dispose of a portion of them; he was afraid that they would be lost or stolen and he would bring them over and talk with me about them. No funds had been placed at my disposal by the Government——

Mr. Delehanty (interrupting): By the Gov-

ernment? A. Yes; by the Government, but 223
all expenses and purchases were reported to Washington for allowance or disallowance and payment. Mr. Webster at the time was very poor, anxious for a horse and wagon, and told me to take four or five of the wampums and see what I could give him for them. The thirteen figures was the wampum that seemed to me——

MR. PAIGE (interrupting):

Q. Upper wampum of the lower right-hand picture? A. Upper wampum of the lower right-hand picture; yes, sir. 224

(Witness continuing)—seemed to me to have more of national interest ——

MR. PAIGE (interrupting):

Q. Why? A. Why, because it represented the thirteen colonies, seven on one side and six on the other, commemorating the treaty of Washington with the Six Nations.

Q. So that the belt represents the treaty which Gen. Washington made with the Six Nations? A. It represents the Indian idea of that treaty.

Q. It was made to commemorate that treaty? A. Yes, sir; that is what I understand, I understand it so. It struck me that there was a sensible 225
historical factor that had interest.

(Witness continuing) At that time I had no funds of my own available, but felt confident that the expense was within my instructions and would be allowed, and I agreed to pay him as soon as I could get to Syracuse and return $75.00, which he and the chief said he needed to secure his horse and wagon outfit.

MR. PAIGE:

Q. When you say the chief, you mean Daniel La Forte? A. Yes, sir; all the negotiations were made through Chief Daniel La Forte.

226 MR. DELEHANTY:

Q. Did you give him the money? A. I paid him the $75.00 and took his receipt.

Q. You paid Webster the $75.00? A. Yes; in the presence of Daniel La Forte, who witnessed his signature to the receipt.

Q. Witnessed the signature on the receipt given to you by Webster for the money? A. Yes, sir.

Q. (Showing witness paper) Is that the signature of Daniel La Forte on the receipt? A. Yes, sir.

Q. Is that the mark of Thomas Webster? A. Yes, sir.

227 MR. DELEHANTY: I offer the receipt in evidence. The receipt is marked by the stenographer Exhibit "B."

Mr. Paige reads the said receipt as follows:

"Received from seventy-five
"dollars, $75.00

his
THOMAS x WEBSTER.
mark.

"Witness,
"DANIEL LAFORTE."

Written at the top are the words and figures:

228 "Syracuse, N. Y., Feb. 10, 1891," which Gen. Carrington says he wrote in this morning.

WITNESS: Yes, sir.

MR. DELEHANTY:

Q. The receipt reads: "Received from $75.00." Will you explain why the person or body from whom the money was received was left blank? A. It was left blank until I could receive response from Washington as to whether the purchase would be recognized as an official purchase or only be treated as a personal purchase.

Q. Did you ever receive any such authority to have it recognized as an official purchase? A. I

did not; it was disallowed. I was instructed to 229
make any purchase if I thought it best for the public care, but the government would not refund me.

Q. How long did you remain at the home of Daniel La Forte on that occasion? A. I couldn't tell within several weeks.

Q. Several weeks? A. I forget whether it was six or seven weeks: nearly two months.

Q. During that time, or any other time, did Daniel LaForte say to you that Thomas Webster held any official position as wampum keeper, or otherwise? A. No; Mr. Webster called himself 230
wampum-keeper because he was the only man that had the wampums and kept them, and so cherishing the tradition as wampum-keeper, and I treated him in my report as wampum-keeper, but I did not know him officially as such. Daniel La Forte treated Webster as tradition treats a person who collects postage stamps and such things, and as such is the possessor of national or family association.

Q. Did La Forte say to you that the Onondaga tribe or nation was the owner of any these wampums? A. He did not, and no Indian in Onondaga (and I saw most of them) claimed that anybody but Webster had the absolute control of them. It 231
never was true nor pretended.

Q. Did you at any time throughout your investigations, either in reply to any inquiries made by you or otherwise, hear any Indian of the Six Nations make any statement to the effect that the wampums were anything else but curiosities or relics, or had at the present time any other significance? A. Yes, sir. Quite a good many of the Indians felt that Webster's reading of them was not altogether fanciful, but had its historical value, and they were very glad that they were going to be saved and kept somewhere and not lost. It was

said that Webster really seemed to have second-sight and seemed to see things through those wampums that others did not see—seemed to see historical significance.

Q. This is what La Forte said? A. Yes, Webster seemed to see historical antecedents in these wampums.

Q. That is what La Forte said? A. Yes, sir. In other words, Webster's looking upon these wampums was not considered merely a curious inspection but that there was a history of a people involved in them, and he seemed to get grotesque things out of them.

Q. Did either Webster or La Forte say anything to you in regard to where he had obtained these wampums—this collection of wampums? A. Well, I think in regard to one or two, I asked him how long ——

Q. (Interrupting) You say you asked La Forte how long he had them? A. Yes, and he asked Webster and my impression is that he had one or two of them for quite a number of years, I don't know but he said, it seems to me, as long ago as his father's time—his father had them; that's my impression. One or two of them he brought from Canada.

Q. He also stated he brought them from Canada? A. He got them in Canada.

Q. Did he say he brought or bought them in Canada? A. He got them in Canada.

Q. One or two he got in Canada? A. Yes, sir.

Q. Did he say whom he got those which he got in Canada from? A. No. In dealing with Mr. Webster and securing the wampums it will appear from my report that I endeavored to give as much significance as possible to these wampums in his father's hands for the sake of verifying the general history of the Six Nations.

Q. In your report you also state that they, re- 235
ferring to the wampums, are simply monumental reminders of preserved tradition without any literal details whatever; as curios, and relics, they are valuable; will you state what you refer by that expression—what do you mean by that expression? A. I mean just what it says. The words "literal details" are met by what I have said before about vague expressions.

Q. In the affidavit which you verified on the application for the appointment of a Receiver, which I have here in my hands, you say that nobody among the tribes, or any of them, so far as you were able to learn, disputed Webster's individual 236
ownership of the wampums, is that a fact? A. I never heard it disputed.

Q. And you say—you assert—that no one beyond Webster had any wampums, or claimed any right to any? A. That is true, no one other than Webster claimed right to the wampums held by him.

Q. After you purchased these wampums, how long did you retain possession of them? A. I can't answer that exactly.

Q. But you sold them to Dr. Crane? A. As soon as I found that the goverment would not take them, I had prepared a very fine ash case with plate 237
glass front screwed on, in order to have them exhibited by the Boston Art Museum or the Smithsonian, in case either chose to make themselves the depository. Dr. Crane was also a Yale man and my class secretary, and proposed if I would turn them over to him for deposit in the Art Museum in Boston, or for the Yale Museum, he would pay what was due on the publication of my "Periodic Reader," and in which I had been embarrassed by the purchase of these wampums, and he did so.

Mr. Paige: Q. How much? A. $350.

Mr. Delehanty: Q. When Dr. Crane was about to dispose of the wampums, as he afterwards did by

238 selling them to Mr. Thacher, were you consulted in regard to what you considered a fair price that should be given for them? A. I was.

Q. And did you give any price that you thought a fair one to be paid? A. I gave the opinion that the lowest price that they should be sold for should be $500, that was the lowest.

Q. Whom did you give that price to? A. Dr. Crane.

Q. Do you know whether these wampums after they parted from your possession were publicly exhibited? A. They were publicly exhibited in the Boston Art Museum with the view to have them
239 purchased, but they had no funds available.

Cross-examined by Mr. Paige:

Q. General, how many wampums did you received from Webster? A. I think it was five.

Q. Five? A. I think so.

Mr. Paige: I show General Carrington the Indian Volume of the Census Report of 1890, which I ask the stenographer to mark Pl'ffs. Exhibit 1. (Marked Exhibit 1.)

Q. Is that the book you have spoken of as containing a condensation of Exhibit "A"? A. Yes, sir.

240 Q. The wampums represented in the lower right-hand corner picture of the plate entitled "Historic Wampums" which you have testified about, did you receive all the wampums there pictured from Webster? A. Yes, sir, I did.

Q. And did you receive any others from him than those four? A. My impression is that I received five, which I could verify by a photograph of the case at home, which I will forward you.

Q. You have a photograph at home of all the wampums which you received from Webster, and you say that you will send me it so that it may be attached to this deposition? A. Yes, sir.

Q. If you received a fifth wampum, did you also deliver that to Dr. Crane? A. Yes, sir; whatever I received went into that case, which was forwarded by his order while he was south to Mr. Thacher. 241

Q. So that whatever you got from Webster went into that case to Thacher? A. Yes, sir, and the case was screwed up, and it is described by that photograph which I will send you.

Q. If there were a fifth, can you tell me which one it was from the picture I show you? A. I cannot.

Q. In regard to the four wampums in the lower right-hand picture, you have already given the reading of the figures holding hands, what, as you are informed, is the reading of the large piece with the heart in the middle? A. My impression is that that represents the central one—the heart of the Five Nations. 242

Q. Is that the so-called Hia-wat-ha belt? A. There has been a dispute about that; my impression is that it ought to be regarded as the Hia-watha belt.

Q. Can you give me the reading of the one next below that—the one with the rings? A. That is simply a Five Nations belt—represents the Five Nations. 243

Q. Made to represent the union of the Five Nations—I am quoting Mr. Sanborn's receipt? A. Yes, sir; there was no meaning. It is a belt of the Five Nations before the Tuscaroras joined.

Q. Can you give me the reading of the fourth belt, that has pieces broken out of it, hanging at the bottom of the picture. Perhaps it will refresh your memory if I say that Sanborn's receipt says it represents the first coming of the people with white faces; can you recollect? A. I remember one thing about that that comes to my mind now, that the deer skin were very old, and I place that

244 antecedent among the earliest of the wampums that are preserved.

Q. Among the earliest of the wampums that are preserved? A. Yes, sir.

Q. That would be as early as 1540, wouldn't it? A. Yes, sir, as near; that is all vague.

Q. That is the way you suppose it? A. Yes, sir.

Q. I call your attention to the upper left-hand picture of the plate "Historic Wampums;" you designate it as the Presidentia of the Iroquois 1540; what do you mean by Presidentia? A. They had sometimes mats, sometimes a badge em-
245 blem——

Q. (Interrupting) What do you mean by Presidentia? A. Representative—I got that from Webster.

Q. What do you mean by that word? A. Used in the Council when the Confederacy met in session.

Q. Now, General, what you have spoken, I suppose you also mean the same of the upper right-hand picture (showing)? A. Yes, sir; we call them, speaking familiarly, Six Nations in Canada, but not here. Until the Tuscaroras joined there
246 were only five in the old confederacy.

Q. There were only five until the Tuscaroras joined? A. Yes, sir.

Q. The Tuscaroras joined in 1713? A. Yes, sir.

Q. The two upper plates you suppose to be about the date of 1540? A. Yes, sir; I get that simply from a sort of association.

Q. But that is your belief, your best opinion? A. Yes.

Q. You have spoken of Webster's father, do you know what his name was—it was Harry Webster, wasn't it? A. I don't remember that.

Q. The picture about which you have already

spoken and which you say you took to the St. Regis Indians, where did you get that photograph? A. My impression is I got it from Thomas La Forte or some one before I went to Canada. 247

Q. It represents Canada Indians entirely? A. Yes, sir.

Q. The scene of the reading of wampums is in Canada? A. Yes, sir.

Q. They are Canada Onondagas on that picture? A. Yes; that's right.

Q. All the Indians in that picture are Canada Onondaga Indians? A. Yes, sir.

It is admitted that the four wampums, represented in the lower right-hand picture of the plate entitled "Historic Wampums—Six Nations," are the wampums in controversy in this action and that they were in the possession of Mr. Delehanty, attorney for the defendant herein, about two weeks ago. 248

The Exhibits "A" and "1" are made a part of this deposition, and also the photograph which is to be sent by General Carrington.

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250

SUPREME COURT,

ONONDAGA COUNTY.

In re Suit *vs.* JOHN BOYD THATCHER.

HENRY B. CARRINGTON, U. S. A.

corrects some errors of stenographer, not having had the same read to him before adjournment.

a. On bottom of Page 1 (fol. 203), it should read General in the Volunteer Army, and Colonel U. S. Army, retired. I never was Colonel of Volunteers, but Col. 18th U. S. Infy., May 14, 1861,
251 and Gen. Vols., Nov. 29, 1862.

b. Last line but one (fol. 206), strike out the word "especially," I did not say it. There were other greater changes, while Mr. Wright designed to retain of that all that he regarded as essential.

c. The last answer at the bottom of the page (fol. 236), is wrong, it involves a legal opinion which I neither entertained nor expressed. I said that no one other than Webster claimed right to the wampums held by him, and did not say that no one else had any right to own wampums. As in the case of Mr. Bryant, before alluded to, any
252 person could secure wampums where they were for sale.

d. At bottom of 17th Page (fol. 247), respecting the photograph of the reading of wampum, I stated that my impression was that I obtained it from Thomas LaForte or some one before I went to Canada, and not that I obtained it in Canada. I saw none, as stated, when in Canada.

Note.

Since return to Boston I have not thus far found the photograph which showed the list, but as the negative is so defaced by fire as to be illegible, will see Mrs Crane and forward her copy if she has it.

The foregoing are corrigenda, upon reading type- 253
written copy of evidence, which has been very accurately placed, but the corrections speak for themselves. This is the form therefore in which the matters referred to are evidence upon trial of the cause.

HENRY B. CARRINGTON,
U. S. Army,
Late Specl Agt to Six Nations.

Dated at Hyde Park, near Boston, Dec. 5th, 1898.

HYDE PARK, Mass. January 2nd, 1899.

EDWARD WINSLOW PAIGE, Esqr. 254
44 Cedar St. New York.

DEAR SIR.

I have just returned from New Haven, Conn. where I attended American Histy Socy. Annl. Meeting, as one of the Life Members.

It is impossible to answer your questions exactly, & see no occasion for them. I went from Onondaga to the St Regis—came to Hyde Park for a visit; went to the Cherokees, in N. C.; then to the Flathead's in Montana; returned to Hyde Park, put the wampums in shape.

The subsequent summer when Dr. Crane and 255
wife, returned from Europe, met him at Saratoga where I attended a National Teachers Association, and while there, upon stating the condition of my new book, Dr. and Mrs. Crane proposed that they buy the wampums, in that behalf.

They returned to Boston, living there, 10 Concord Square until his death, except winters when he was at their Florida cottage.

The proposed Octavo edition of Six Nations has not been published yet; only that which the Government printed.

In re the wampums, I gave Dr. Crane an order for them, & he took them from my house to the

256 Art Museum, I think, after a short delay, or may have placed them there, first. They were considered his gift to his wife, at the time of the purchase. Circumstances prevented their retention, and the details of his negotionals were only incidentally brought to my knowledge, as my opinion was sought as to their value.

Yours very truly,

HENRY B. CARRINGTON.

If you want the Washington, with my autograph, I will be at the expense of the postage. Senators Hawley, Allison and others have done
257 so.—C.

HYDE PARK, MASSACHUSETTS.

16 March, 1899.

I reported to the Interior Department 25 August 1890 as reaching Akron for consultation with the U. S. Agent for New York. After Alleghany, Cattaraugus, Tonawanda and Tuscorora, I was at Syracuse. I went to Onondaga Castle late in January 1891 and left for Hogansburg (St. Regis) about 12th March 1891. I left Hogansburg, via Montreal, for Hyde Park about the 10th of
258 April, 1891, where I completed my maps and then went to the Cherokees of North Carolina, thence to Montana to move the Flathead tribe. I have since lived in Hyde Park. The time I was in Saratoga was in July 1892. I was there for a week attending the Convention of the National Teacher's Association. There I met Dr. Crane and dined with him. I returned to Hyde Park and sent the wampums to Dr. Crane in Boston.

Mrs. Crane married Dr. Crane in 1891. They went immediately to Europe returning in the Spring of 1892. They went to Saratoga in July 1892 where I met them as I have said and then they returned to Boston where they lived at num-

ber 12 Concord Square. The next winter they spent 259
in Florida from which place Dr. Crane wrote that Mr. Sanborn first visited him in Boston and then wrote me as to what he should ask for the wampums? Afterwards Dr. Crane returned to Boston and lived at number 12 Concord Square until his decease.

HENRY B. CARRINGTON,
U. S. A.
Late Special Census & Indian Agent.

JOHN A. DELEHANTY,
Attorney & Counsellor-at-Law,
Commercial Bank Building,
Albany, N. Y.

February 17, 1899.

Hon. EDWARD WINSLOW PAIGE, 260
Counselor at Law,
44 Cedar Street,
New York.

MY DEAR MR. PAIGE:—

Your letter of Thursday has been received by me.

Mr. Thacher has informed me that he went to Europe during the month of December, 1894, and remained away from Albany during a period of three months at that time. He again went to Europe during the month of February, 1898, and remained away from Albany during a period of 261
three months. These are the only two occasions that he has been outside the United States since the first of March, 1893. During the continuance of the World's Fair at Chicago, between the months of May and November, 1893, he made frequent trips between Albany and Chicago; but with that exception and occasional business trips to Washington during the winter of 1893-1894 covering a period of two or three days at a time, and except of course while he was in Europe, he has not been outside the state of New York since March, 1893.

Very truly yours,
JOHN A. DELEHANTY.

262 SUPREME COURT.

THE ONONDAGA NATION and others

against

JOHN BOYD THACHER.

We stipulate that the foregoing deposition of Henry B. Carrington, being pages 1 to 22 inclusive
263 of type-writing; and the three foregoing letters of Henry B. Carrington dated respectively, 5 December, 1898, 2 January, 1899 and 16 March, 1899, are evidence in this case and in any other action brought to recover the same wampums that are in controversy in this action and the foregoing letter of John A. Delehanty dated 17 February, 1899, is evidence in this action.

EDWARD WINSLOW PAIGE,
Plaintiffs' Attorney.

JOHN A. DELEHANTY,
264 Defendant's Attorney.

Extracts from Special Bulletin (Ex. A and 1.)

[Title]

"ELEVENTH CENSUS OF THE UNITED STATES.
"ROBERT P. PORTER,
"Superintendent.

"EXTRA CENSUS BULLETIN.

"INDIANS.

"The Six Nations of New York.

"Cayugas, Mohawks, Saint Regis, Oneidas, Onon-
"dagas, Senecas, Tuscaroras."

Exhibit A and 1 (Census Report), page 447.

"THE SIX NATIONS OF NEW YORK: The story "of the Five, afterward Six, Nations, or, more "properly, the league of the Iroquois, no matter "how or when told, never loses its interest. The "uncertainty and doubt surrounding most North "American Indian history are partially removed "from the Six Nations. They of all American "Indians have best preserved their traditions. "Besides, their system was so complete and their "goverment so unique and so well fitted to the "people that from the earliest European arrival "they have been constantly written about. Their "small numbers, compared with the enormous "country they occupied and the government they "originated, with their deeds of daring, will always "excite surprise. Their league, tribal and indi-"vidual characteristics, and personal strength of "will, together with their great courage and "prowess, account for their success in war and "the methods which brought comfort in peace.

"The Six Nations are to American Indian life "what the Greeks and Romans in ancient history "were to the nations bordering on the Mediter-

"ranean. Their generalship in war was of the
"highest, their civilization and cultivation, for
"their surroundings, the most advanced, and their
"economies of life the most applicable and fit of
"all the American race within the present bound-
"aries of the United States and Canada.

"They made war or peace with equal facility,
"holding with a death-grasp to their old ideas and
"traditions, conquering and absorbing tribes, and
"getting the control and government of the coun-
"try from the now Carolinas on the south to the
"lakes on the north and the Mississippi on the
"west. The Mohawk war-whoop was the terror
"of aboriginal life, and the signal-fires of the
"Iroquois league, illuminating the hills and val-
"leys of the Atlantic coast, meant danger to the
"outlying tribes.

"Their phenomenal fighting capacity, coupled
"with the rapidity of movement and power of
"concentration of their fighting men, gave the im-
"pression of a vast number of warriors. It can be
"stated with almost a certainty that the league of
"the Iroquois since the advent of the European on
"the American continent and up to 1880 never
"exceeded 15,000 persons, and it never had an
"available fighting force of more than 2,500 men;
"and the astonishing fact is presented by the
"census of 1890 and the statistics of non-resident
"Iroquois tribes that the league of the Iroquois is
"stronger in 1890 than it was in 1660, when first
"estimated by competent Europeans. In 1660 it
"was estimated at 11,000; in 1890 it is 15,870.

"Reports of late years as to the condition of the
"Six Nations of New York have been contradic-
"tory, and many of them were evidently manu-
"factured and given out by interested parties when
"legislation to affect these Indians was pending.
"Considering the fact that no correct census em-

"bracing their actual condition had ever been made 271
"up to 1890, great care was taken in laying out the
"details of the work for a census and in selecting
"the agent to execute it."

Page 2 of Ex. 1 and A.; page 448 of C. R.:

"The struggle now within the Six Nations for
"control of their government lies between the
"pagan and christian elements, and, in addition,
"they have to war with the wiles of the white
"man. Official corruption has been noted in the
"past among those high in authority, but this is
"now being rapidly remedied. The Six Nations
"are in most danger from without. The pagans, 272
"as used here (meaning the old party), are those
"holding to the faith of their fathers and opposing
"the white man and his methods. The christian
"element means those who accept christianity as a
"doctrine. As far as personal morals and the
"daily life of most of these people are concerned,
"the difference is merely technical, and consists in
"definition, the word of a pagan being considered
"as good as that of a christian, and, in the view
"that the state has nothing to do with one's pro-
"fession of creed, among the Indians a self-reliant
"pagan is preferable to a dependent christian. In
"the league of the Iroquois the largest liberty of 273
"the person consistent with the safety of the
"league is permitted. From personal independence
"and sense of manhood many of the Iroquois have
"never departed. The reservation Indians of the
"west are the reverse of this. They look upon the
"nation and the great father as providers and dis-
"pensers of food and clothing, and lean heavily
"upon them and the public treasury. The Six
"Nations of New York have generally asked the
"great father, the Congress, and the New York
"legislature to let them severally alone. They
"have been in a measure let alone by the author-

274 " ities, and the result is that they are self-sustain-
" ing and much further advanced in civilization
" than any other reservation Indians in the United
" States, and as much so as an average number of
" white people in many localities. They have
" borne the burdens of peace with equanimity, and
" met the demands of the war for the Union with
" patriotism and vigor. Envious Caucasians, hun-
" gering for the Indians' landed possessions in
" New York state, as elsewhere, have been active
" and earnest in efforts to absorb their sustenance.
" They have been kept from doing so thus far
" through the efforts of earnest and active fair-
275 " minded people, who have prevented their spolia-
" tion. The Six Nations have been charged with
" being pagans, heathens, and bad citizens gener-
" ally, but investigation shows the latter charge to
" be false."

Page 3 of Ex. 1 & A.; page 449 of C. R.:

" The law and facts show that the reservations of
" the Six Nations of New York are each indepen-
" dent, and in some particulars as much sovereign-
" ties, by treaty and obligation, as are the several
" States of the United States. The Saint Regis res-
" ervation, however, differs somewhat from the oth-
276 " ers. The lands within these reservations, of course,
" partake of and carry with them the conditions
" of the grant. These nations are anomalies, and,
" with the exception of the Five Civilized Tribes
" in Indian territory, who are each known by
" treaty as nations, are the only ones of like char-
" acter in the United States. They are in fact
" almost nations within a nation. They were crea-
" ted and grew more out of fear of the Indian, and
" the desire to get rid of and keep him at peace at
" any price, than as an act of justice. In Indian
" territory they are embarrassing to the National
" Government, and an eysore to the people who

"desire to live there. In New York they are a 277
"wonder to the curious, and the expectant haven
"of hope to many speculators.

"The end of the century will probably see the
"so-called nations in Indian territory absorbed or
"dispersed, and a marked change in the present
"Indian nations in New York.

"The incidents of the enumeration of the Seneca
"nation showed a strong desire on the part of the
"advanced portion to break away from old-time
"ideas and to keep abreast with their white neigh-
"bors. The entire reorganization of the Iroquois
"Agricultural Society was a step forward. A more 278
"important indication in the same direction was
"that of the Spring election in May, 1891, when
"nearly every person elected was able to speak
"and read the English language, and embraced
"among their number men of property and pro-
"gressive tendencies.

"The members of the Six Nations of New York
"residing on reserations or living in tribal rela-
"tions, do not vote at county or state elections,
"nor do they pay taxes to the counties or the
"state. They are, therefore, Indians not taxed.
"They have a constitution, and the Senecas have
"a charter from New York as well as their own. 279
"They are amenable to national and state courts
"or laws only in respect of crimes, except the
"Saint Regis Indians, hereinafter noted.

"If the Iroquois, native or foreign-born, want
"to become citizens of the United States, they
"must renounce allegiance to their own people;
"but if those of the Six Nations in New York
"become such citizens they cannot carry their real
"property interest with them so that it will be
"subject to levy and sale for debt on contracts.
"This, in fact, is at present a practical inhibtion
"in their way to citizenship. The several reser-

280 " vations belong to them (Saint Regis differs some-
" what from the others), and neither the State of
" New York nor the United States can legally
" break them up without the Indians' consent, or
" through conditions analogous to those of war.
" They have always been recognized as nations."

Page 4 of Ex. 1 & A.; page 450 of C. R.:

" The conclusion is irresistible that the Six
" Nations are nations by treaty and law, and have
" long since been recognized as such by the United
" States and the State of New York, and an en-
" lightened public will surely hesitate before pro-
281 " ceeding to divest these people of long-established
" rights without their consent—rights recognized
" and confirmed in some cases by the immortal
" Washington and by more than a hundred years
" of precedents and legislation."

" PEACEMAKER COURTS: The peacemaker courts
" are peculiar to the Seneca Indians of New York.
" They exercise probate jurisdiction and jurisdic-
" tion over minor offenses. Appeal may be taken
" to the council of the Seneca nation proper on the
" Allegany and Cattaraugus reservations, and to
" the separate council of the Tonawanda Senecas.
282 " The term of office of a peacemaker is for three
" years, one being elected annually for each reserva-
" tion, but those of the Tonawanda band, as with
" all its officers, have no official relation to the
" other bands of Senecas.

" The president of the Seneca nation sits as judge
" upon the impeachment of a peacemaker. Among
" the grounds of impeachment is taking a bribe,
" or, by relationship or otherwise, having interest
" in a case.

" Divorces, as well as probate matters, come be-
" fore this court."

Facing page 7 of Ex. 1 and A. and page 472 of C. R.:

Page 19 of Ex. 1 & A.; page 461 of C. R.: 283

"HISTORICAL OUTLINE."

"The retirement of the Indian westward within "the United States has been qualified by two his- "torical factors. The first grew out of the un- "limited and conflicting sweep of British land "grants, which involved subsequent conflicts of "jurisdiction and corresponding compromises, "the second was incidental to the passage of the "ordinance of July 13, 1787, which organized the "northwest territory. The first, especially in the "adjustment of the claims of Massachusetts and 284
"New York, to the same lands, dealt with Indian "titles and rights which neither party could wholly "ignore. The white men had overlapped and "practically surrounded certain internal nations. "The United States followed the British prece- "dent, recognizing the independent sovereignty of "the Five Nations (*a*) in New York, and the rival "states of Massachusetts and New York made their "adjustments upon the same general basis.

"Unlike their less fortunate countrymen in the "southern states, the Five Nations inherited titles, "which they fully maintained in spite of French "invasion, compelling Great Britain to honor 285
"those titles in her settlement of issues with "France. The French claim of discovery was not "supplemented by one of conquest. The Iroquois "confederacy successfully defended its ancestral "homes against both Indian and civilized invad- "ers, even before Plymouth and Yorktown were "colonized or Hollanders occupied Manhattan Is- "land. At the establishment of the American re- "public the Five Nations were still too strong to

"(*a*) The Five Nations, or League of the Iroquois, became the Six "Nations after 1713 by the admission of the Tuscarora Indians "from North Carolina into the Union's confederacy."

286 "be ruthlessly forced out of their surroundings,
"and the sentiment of the American people, sup-
"ported by President Washington, completely
"suppressed any demonstration in that direction.
"The campaign of General Sullivan was based upon
"hostile invasion by the Indians, and its settle-
"ment was treated as the end of a necessary war
"with contiguous states.

"The ordinance of July 13, 1787, dealt with
"the Indian upon the border, whose hunting range
"had no limit, and whose home jurisdiction had
"no distinctive definition.

"The distinction between the early status of the
287 "New York tribes and that of the western tribes
"is an important one in applying the facts obtained
"for the Eleventh Census of the United States to
"the solution of the problem in future dealings
"with the Six Nations.

"The Indians of New York, early recognized as
"an independent body politic, too strong to be
"despised and to be conciliated as allies against
"other enemies, have been comparatively undis-
"turbed by modern progress, but which must in-
"evitably resolve all purely tribal relations into
"common citizenship. The pressure from without
288 "has, in the main, been that of example and ideas
"rather than that of force. The reduction of their
"landed possessions and the modification of their
"governmental forms and social usages have been
"matters of negotiation, treaty, and friendly ad-
"justment. The grant by King James I of Eng-
"land to the Plymouth colony, afterward known
"as Massachusetts, from the Indian tribe of that
"name, and the grant of Charles II to the Duke
"of York covered in part the same lands, involv-
"ing questions similar to those which attend Vir-
"ginia land grants, and all others which extended
"westward to the Pacific ocean at a time when the

"geographical status of lands 'westward' had no "clear description."

"A brief reference to the substantial settlement "of this and other matters affecting the New York "tribes is all that is needed in this connection. "The numerous national treaties and acts of Con- "gress and other treaties between the State of "New York and the Six Nations, which are mat- "ters of public record, have been compiled and "published by the State of New York in a volume "entitled 'Report of special committee, appointed "by the assembly of 1888 to investigate the Indian "problem of the State.' The documents occupy "320 pages, octavo size. Additional printed mat- "ter of 804 pages embodies the testimony taken "by a special commission in prosecuting their in- "quiries, and an appendix to the volume cites "statutes and treaties which have historic rela- "tion to the subject-matter."

Page 20 of Ex. 1 and A; page 462 of C. R.:

"The tendency of attempted legislation and "very pronounced utterances from respectable "sources have been in the direction of an abroga- "tion of all existing treaties, with or without the "consent of the Indians. All such propositions "will be confronted by a national judicial nega- "tive, and no impatience with slow Indian de- "velopment can excuse the impairment of his "substantial titles and rights or the imposition of "terms of conquest."

"ANTECEDENTS OF THE SIX NATIONS: It is "impossible to justly apply the tests of to-day "without deference to the antecedents of this "people and that course of history which has per- "petuated their independence while nearly all "their contemporary tribes have diminished or "disappeared. The advent of the white man in

292 " the colonization of the Atlantic coast was at a
" time when the Iroquois confederacy of the Mo-
" hawk, Oneida, Onondaga, Cayuga, and Seneca
" nations had practically mastered the Algonquin
" tribes, which in Canada, New England, the
" middle colonies, and the west had long girdled
" the New York tribes as a belt of fire. Unlike
" the Algonquins, whose tribes had nothing to
" bind them together but certain similar peculiar-
" ities of dialect and jealousy of the Five Nations,
" the Iroquois (the Mohawks, Oneidas, Onondagas,
" Cayugas, and Senecas) had a constitutional bond
" of union, described by Lossing as a 'barbaric re-
293 " public, the Iroquois confederacy, existing in the
" wilderness, simple, pure, and powerful, with its
" capital 100 miles from the sea, and unknown
" until Cartier sailed up the Saint Lawrence, until
" Champlain penetrated its forests, and Hudson
" discovered the beautiful river that bears his
" name.'

" The traditions of the formation of this league
" are very old, systematic, and carefully preserved.
" The league was called Ko-ni-shi-o-ni, the 'cabin
" builders' or the 'long house,' of which the
" Mohawks held the eastern and the Senecas the
294 " western door, with the great council fire or fed-
" eral capital among the Onondagas. The words
" attributed to Hiawatha, 'the very wise man,'
" mingled with much romantic story, are so de-
" scriptive of the family peculiarities of the differ-
" ent nations that they are worthy of notice in the
" briefest of the two forms preserved among the
" people. The scene of the conference was on the
" hill slope north of Onondaga lake, in the State
" of New York."

"The Words of Hiawatha.

" We have met, members of many nations, many
" of you a great distance from home, to provide for

" our common safety. To oppose these foes from 295
" the north by tribes, and alone, would prove our
" destruction. We must unite as a common band
" of brothers, and we shall be safe.

" You Mohawks, sitting under the shadow of the
" great trees, whose roots sink deep into the earth,
" and whose branches spread over a vast country,
" shall be the first nation, because you are warlike
" and mighty.

" You Oneidas, a people who recline your bodies
" against the everlasting stone that cannot be
" moved, shall be the second nation, because you
" give good counsel.

" You Onondagas, who have your habitation at 296
" the great mountain and are overshadowed by its
" crags, shall be the third nation, because you are
" greatly gifted in speech and are mighty in war.

" And you Cayugas, whose habitation is in the
" dark forest and whose home is everywhere, shall
" be the fourth nation, because of your superior
" cunning in hunting.

" And you Senecas, a people who live in the
" open country and possess much wisdom, shall
" be the fifth nation, because you understand the
" art of raising corn and beans and making
" cabins. 297

" You five great and powerful nations must
" unite and have but one common interest, and
" no foe shall be able to subdue us. If we unite,
" the 'Great Spirit' will smile upon us. Brothers,
" these are the words of Hiawatha. Let them
" sink deep into your hearts.

" In 1535, at the site of the future city of
" Montreal, Cartier made a vocabulary of Indian
" words, showing that the Iroquois language was
" then spoken by the Hurons, who were con-
" quered or absorbed by the Iroquois. The con-
" federacy is held to have had its origin about

298 "this time. This league, purely aristocratic in
"spirit, but republican and representative in form,
"was not political, but chiefly for mutual de-
"fense. The carefully preserved wampums of those
"early times will receive notice in another con-
"nection. 'Each nation was distinct and inde-
"'pendent as to domestic affairs,' writes Lossing,
"'but bound to the others by ties of honor and
"'the general good.' Each had its principal
"sachems or civil magistrates with subordinate
"officers, in all 200, besides 50 with hereditary
"rights. These were assigned as follows: To the
299 "Mohawks, 9; to the Oneidas, 10; to the Onon-
"dagas, 14; to the Cayugas, 10, and to the Sene-
"cas, 8. Each nation had subdivisions of tribes
"or clans, such as Wolf, Bear, Turtle, Snipe,
"Beaver, Deer, Hawk and Heron, 8 in all. The
"insignia or totem (mark) of each was subsequently
"placed upon treaties after the European style.
"These tribes or clans formed one of the closest
"bonds of union among the confederated nations.
"In effect, each tribe was divided into 5 parts,
"and 1 part was located in each nation. The
"Mohawk Wolf regarded the Seneca Wolf as his
"brother. Thus, if the nations fell into collision
300 "it would have turned Bear against Bear, Wolf
"against Wolf, brother against brother. 'The
"'history of the Ho-de-no-sau-nee,' says Morgan,
"'exhibits the wisdom of these organic pro-
"'visions, for during the whole history of the
"'league they never fell into anarchy nor verged
"'upon dissolution from internal disorders. The
"'whole race was woven into one great family
"'family of related household.' The 8 tribes
"were, however, in 2 divisions of 4 each, the
"Wolf, Bear, Beaver and Turtle forming one di-
"vision, and the Deer, Snipe, Heron and Hawk
"forming the other. Marriage between members

"of the same division was nearly as rigidly for- 301
"bidden as between members of the same tribe."

Page 21 of Ex. A & 1.; page 463 of C. R.:

"The league had a president with 6 advisers,
"and authority to convene representatives of all
"tribes in cases requiring concert of action. Merit
"was made the basis and sole reward of office.
"Oh-to-da-ha, an aged Onondagan, was the first
"president of the league. The mat upon which
"he sat is still preserved with care, and the buck-
"skin threads upon which the shell and stone
"beads were strung are still sound, presenting one
"of the most beautiful relics of the history of the 302
"confederacy.

"In the military department chiefs were elected
"for special causes, nor did they hesitate in
"extreme cases to depose the civil sachem to give
"greater force to battle action. The military ser-
"vice was not conscriptive, but voluntary, although
"every man was subject to military duty, and to
"shirk it brought disgrace.

"Most extraordinary of all, the matrons sat in
"council with a substantial veto as to peace or
"war. 'With these barbarians,' says the historian
"of New York, 'woman was man's co-worker in 303
"'legislation, a thing yet unknown among civil-
"'ized people.' Doctor Colden, in his history of
"the five Nations, sagely suggests that 'here we
"'may with more certainty see the original forms
"'of government than in the most curious specu-
"'lations of the learned.' Such was their regard
"for the rights of man that they would not
"enslave captives; neither did they allow inter-
"marriages among families of the same clan.
"This has been the prevailing law up to the
"present time."

304 Page 24 of Ex. 1 and A.; page 465 of C. R.:

"THE GOVERNOR TRYON MAP: The latter has "historic value from its description of the country "of the Six Nations, with part of the adjacent "colonies, recognizing at the time the independent "relations which they sustained to Great Britain. "The vast tract then controlled by the Seneca "Indians is clearly defined, and the changes of "120 years appear more impressive when the "boundaries and condition of the present repre- "sentatives of the former Six Nations are brought "into close relation to the facts of to-day.

305 "AREAS OF THE SIX NATIONS RESERVATIONS "IN NEW YORK AND CORNPLANTER SENECA, IN "PENNSYLVANIA.

	Acres.
"Onondaga	6,100.00
"Tonawanda	7,549.73
"Allegany	30,469.00
"Oil Spring	640.00
"Cattauragus	21,680.00
"Tuscarora	6,249.00
"Saint Regis	14,640.00
"Cornplanter, in Pennsylvania.	640.00
306 "Total	87,967.73

"The New York commission estimates the acre- "age of the Onondaga reservation at 7,300. The Saint Regis, with swamp land, is estimated at 15,280 acres.

"RESERVATION OF THE SIX NATIONS IN NEW "YORK: 1890. The maps of the existing reserva- "tions, as defined in 1890, locate each family, "water course, and road, developing, as if by "accident, in the clustering of their homes, the "differences between those of each nation who "'hold to the tradition of the father, and those

OFFICERS OF THE LEAGUE OF THE IROQUOIS IN THE UNITED STATES.

DANIEL La FORTE (Ha-You-Wa Eah), "Intestine Bruiser."
Chairman of League, and adopg To-do-da-ho. Wolf Tribe, Onondaga.

THOMAS WEBSTER (Ha-yeh-do-gih-weh), "Bitter Body."
Keeper of the wampum. Snipe Tribe, Onondaga.

JARIS PIERCE (Jah-dah-dah), "Sailing Whale."
Clerk of Six Nations. Onondaga.

" who welcome the civilization and christianity of 307
" the white man.

" For a complete and full history of the original
" treaties and authorities as to the legal status of
" the Six Nations reservations in New York (beside
" the report of the New York state commission
" herein referred to), see the report prepared by
" Alice C. Fletcher in 1885 and a monograph by
" Franklin B. Hough, of Lowville, New York, on
" the Indian tribes of New York, both printed in
" Executive Document No. 95, Forty-eighth
" Congress, second session, which are full and
" most valuable. The various New York reports 308
" and especially that of the New York commis-
" sion, made in 1889, contain much of interest as
" to the reservations of the Six Nations."

Page 25 of Ex. 1 & A; page 466 of C. R.

" ONONDAGA RESERVATION: An old wampum
" of 1608, representing the Iroquois confederacy,
" has for its " center house," to indicate the rank
" of the Onondagas, a heart. On either side are
" joined two sister nations, and, although fewer in
" numbers at present than others, the Onondagas
" are given the first place in illustration of the Six
" Nations in 1890." 309

Facing page 33 of Ex. 1 and A. and page 473 of C. R.:

310 Page 33 of Ex. 14 A., page 471 of C. R.:

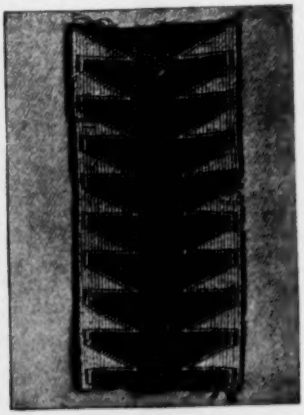
"ANCIENT AND MODERN GOVERNMENT, PROVISIONS AND INCIDENTS:

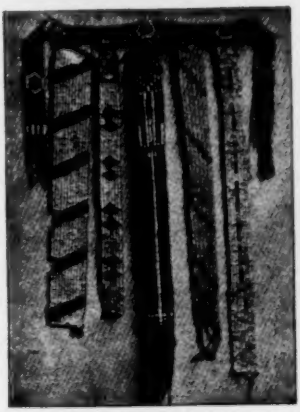
"The Iroquois league had its democratic and "republican elements, but the separate national "governments were essentially oligarchic. The only "semblance of written law was the wampum. It "was the duty of the 'keeper of the wampums' "to store all necessary facts in his memory and "associate them with the successive lines and ar-"rangements of the beads so that they could read-
311 "ily be called to mind. At general councils the "wampums were produced, solemnly expounded, "and made reminders of history and duty.

"'Reading the Wampums' became, therefore, a "means by which to perpetuate treaties, and the "exchange of wampums was an impressive occa-"sion. Both the Canadian and New York divisions "of the Six Nations retain as national heirlooms "these evidences of the chief facts in their national "life."

"The Onondagas retain the custody of the wam-"pums of the Five Nations, and the 'keeper of "'the wampums,' Thomas Webster, of the Snipe
312 "tribe, a consistent, thorough pagan, is their in-"terpreter."

"According to the Narrative of Indian Wars in "New England, the original wampum of the Iro-"quois, in which the laws of the league were "recorded, 'was made of spiral water shells, strung "'on deerskin strings or sinew and braided into "'belts or simply united into strings.' Mr. Hub-"bard describes the wampum as 'of two sorts, "'white and purple.' The white is worked out "of the inside of the great conch shell into the "form of a bead, and perforated to string on "leather. The purple is worked out of the inside

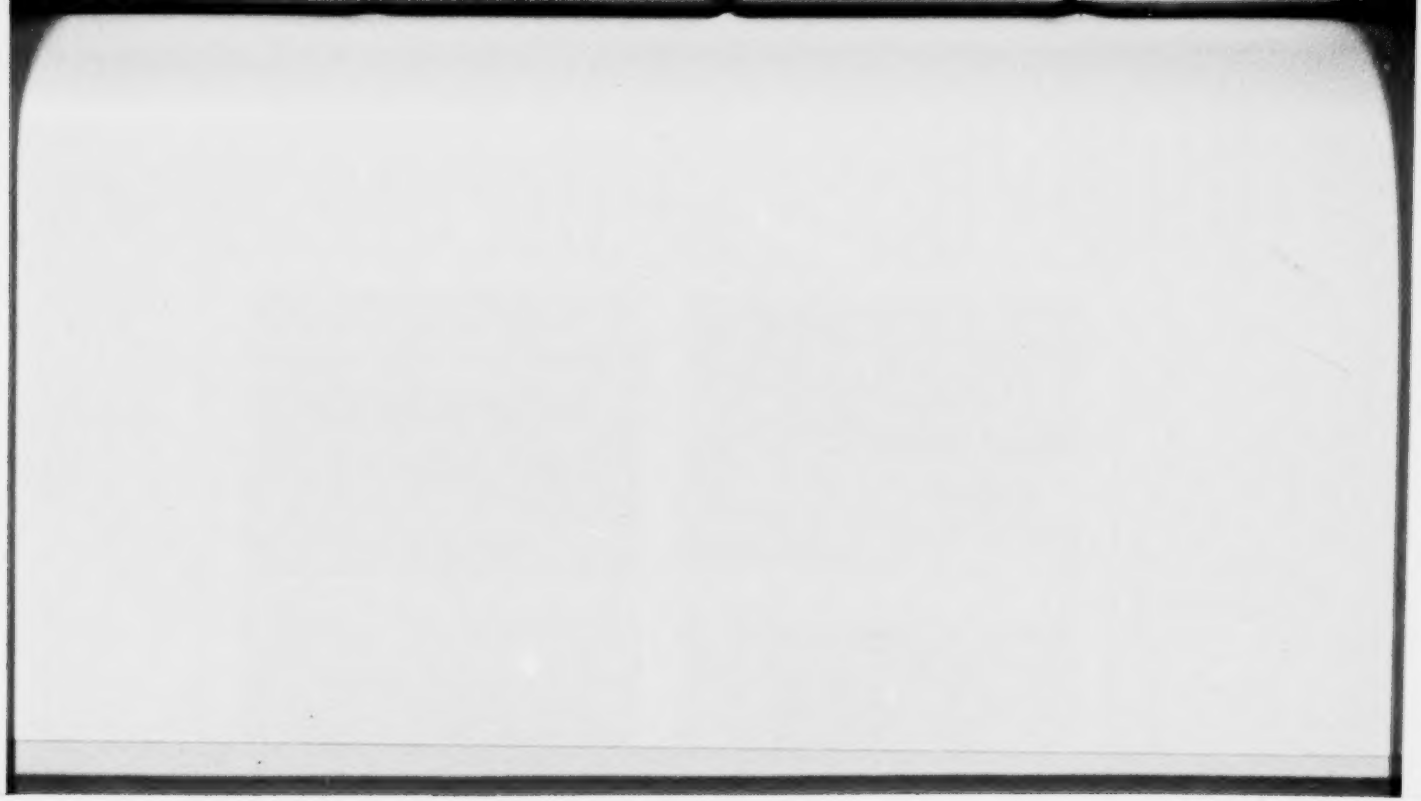




HISTORIC WAMPUMS—SIX NATIONS.

Presidentia of the Iroquois, about 1540.
Six wampums of the Six Nations.

Wing or dust fan of Presidentia of Six Nations.
Group of four wampums and turtle rattles, used in Feather Dance.



"of the mussel shell. A single wampum repre- 313
"senting the Onondagas by a heart, in the centre
"of the league, and older than the settlement by
"the white people, or, as claimed, dating back to
"Champlain's invasion in 1608, contains over 6,000
"white and purple beads made of shell or bone.
"Another of later date, 6 feet in length and 15
"strings wide, and containing 10,000 beads, repre-
"sents the first treaty between the league and the
"United States. In the centre is a building repre-
"senting the new capitol. On each side is a figure
"representing Washington and the president of
"the league, while, hand in hand, the thirteen 314
"colonies or States, on one side seven and on the
"other side six, in all fifteen figures, complete the
"memorial record. The mat on which the presi-
"dent of the league (To-do-da-ho), is supposed to
"have sat when the league was instituted, about
"the middle of the sixteenth century, and the sus-
"pended mat to keep off the dust, are still in good
"preservation. One wampum represents the con-
"clusion of peace with seven Canadian tribes who
"had been visited by the Jesuits, having a cross
"for each tribe, and with a zigzag line below, to
"indicate that their ways had been crooked but
"would ever after be as sacred as the Cross. Still 315
"another memorial of days of craft and treachery,
"while the league was too feeble to take the field
"against the Algonquin tribes represents a guarded
"gate, with a long, white path leading to the inner
"gate, where the Five Nations are grouped, with
"the Onondagas in the centre and a safe council
"house behind all. There are eleven of these his-
"toric wampums, each fraught with traditional
"story of persons and events.

"Daniel LaForte, who has been chairman or
"president of the league, and also of the Onondagas,
"and elsewhere referred to, still insists that the

316 " wampums, as expounded by Thomas Webster,
" ' are government enough for the Nation, and lay
" ' down all the rules of duty that are needed.'
" The fact that the people can have no key to
" their own laws, and that the *dictum* of the wam-
" pum reader is binding, just as his memory or
" interpretation of the emblem shall dictate, seems
" to weigh little with the pagan party. Notwith-
" standing the claims made that the wampums can
" be read as a governing code of law, it is evident
" that they are simply monumental reminders of
" preserved traditions, without any literal details
317 " whatever. As curious relics they are valuable.
" Photographs of all the wampums were obtained
" to accompany the report of the Six Nations In-
" dians, with the explanation of each as read by
" the wampum keeper." The mat of the to-do-da-ho
" and the wing (mat) used by the headman to
" shield him from the dust while presiding at the
" council are well preserved. The first group,
" from left to right, represents a convention of the
" Six Nations at the adoption of the Tuscaroras
" into the league; the second, the Five Nations,
" upon 7 strands, illustrates a treaty with 7
" Canadian tribes before the year 1600; the third
318 " signifies the guarded approach of strangers to
" council of the Five Nations; the fourth repre-
" sents a treaty when but 4 of the Six Nations
" were represented; and the fifth embodies the
" pledge of 7 Canadian ' Christianized ' nations to
" abandon their crooked ways and keep an honest
" peace. Above this group is another, claiming to
" bear date about 1608, when Champlain joined
" the Algonquins against the Iroquois. The
" second group includes, also in the center, the
" official memorial of the organization of the
" Iroquois confederacy, relating back to about the
" middle of the sixteenth century, and imme-

"diately over that of 1608, suspended between 319
"the 'turtle rattles,' which were used at the
"feather dance at Cattaraugus January 21, 1891,
"is a ragged wampum of unknown antiquity.
"Above, and containing the general group, is the
"wampum memorial of the first treaty made by
"Washington on behalf of the 13 original States
"and the president of the Six Nations at the
"national capital."

"GOVERNMENT AND EXISTING CONDITION OF THE
"RESERVATIONS:

"To give a clear view of the government and
"present condition of the reservations, they will 320
"be noticed in the order already adopted.

"The Onondaga Nation is governed by 27 chiefs,
"all but 2 being of the pagan party; 2, however,
"are sons of christian ministers, and others pro-
"fessed for a time to be christians, but quietly
"rejoined old associations. Albert Cusick, lay
"reader in the Church of the Good Shepherd,
"held the office of to-do-da-ho (president) at one
"time, but was deposed on account of his religion.
"Those who have thus resumed their former poli-
"tical and social relations are among the most
"persistent in opposing a change. Daniel La
"Forte, a genial man in his own house, and once 321
"active in church work, is one of this number. It
"is, nevertheless, true that many of the most in-
"fluential, whose property is gaining in value,
"and whose business gradually increases their
"dependence upon the white people for a market
"and like benefits, realize that their own interests
"would be more secure under some recognized
"code of law for the government of the nation.

"The ruling chiefs, chosen by the females of the
"families represented, as in very ancient times,
"are practically in office for life. In case of a
"vacancy the successor chosen may be under age."

322 Page 36 of Ex. 1 and A; not in C. R.:

"It would be almost impossible for any com-
"munity of white persons, whether of a high
"or low social grade, whether educated or
"ignorant, to live in peace under the loose re-
"straints which the Six Nations call their govern-
"mental system, and yet there are very few dis-
"orders, few crimes, and petty offenses against
"person or property are very infrequent. Pride
"in the old systems of the confederacy and in the
"traditions and memories of early times have much
"to do with the involuntary respect paid to the
323 "chiefs, sachems or councillors, who are officially
"recognized as their government by the respective
"nations; but natural indolence or indifference to
"the future, provided the immediate present be
"tolerable, has its effect, and suspicion that the
"white people urge citizenship upon them for the
"purpose af a more ready control of their lands
"prevents decided action toward citizenship."

Page 37 of Ex. 1 & A; page 473 of C. R.:

"The names of the present chiefs are as follows,
"those marked with a x being unable to read or
"write: x Thomas Webster (Snipe) age 64; x
324 "John Green (Wolf) 74; x Asa Wheelbarrow (Eel)
"64; Charles Green 30; x William Hill, 52; John
"Hill, 56; x Peter George (Eel) 38; John R.
"Farmer, 28; x James Thomas, 42; George Van-
"every (Snipe) 36; x Frank Logan (Wolf), 35;
"William Lyon (Turtle), 50; x Billings Webster,
"31; Daniel LaForte (Wolf) 58; x George Crow
"(Wolf) 34; x Baptist Thomas (Turtle), 64; x
"Abbott Jones, 76; x Charles Lyon, 57; x An-
"drew Gibson (Beaver), 29; x Wilson Reuben
"(Beaver) 50; Jacob Scanandoah, (Beaver) 70; x
"George Lyon (Eel), 42; x Levi Webster, 35;
"Hewlett Jacobs (Eel) 48; Jacob Bigbear (Turtle);

"John Thomas (Turtle), 30; Enoch Scanandoah, 325
"24."

Page 39 of Ex. 1 & A; page 474 of C. R.:

"The Tuscarora Indians were admitted to the "Iroquois league on the ground of a common "generic origin, retaining their own hereditary "chiefs, but without enlarging the original frame- "work of the confederacy. They had authority "to be represented and enjoy a nominal equality "in the councils. They are styled 'sons,' and in "turn use the term 'fathers' in their official rela- "tions with the league. No authority exists by "which they can be disturbed by the league in the 326
"management of their own affairs. The prevalent "opinion to the contrary is an error. In the Rev- "olutionary war and in the war of 1812 they were "faithful to the white people, and in the war of "the rebellion furnished a reasonable contingent "of volunteers to the union cause.

"Vacancies among the chiefs are filled by the "women of the clans entitled to the appointment. "Here, as among the Onondaga and Tonawanda "bands, the ruling chiefs arrogate and occasionally "exercise the power of displacing chiefs by formal "deposition, or make the place so uncomfortable 327
"as to force a resignation. It is a stretch of pre- "rogative to exercise this power except for a cause "that would require a substantial impeachment, "but there is no method of redress, and the Indian "dislike to bother about local legislation, even in "their own behalf, represses organized effort to "find a remedy."

Page 39 of Ex. 1 & A.; page 475 of C. R.:

"The Saint Regis Indians formed part of the Seven "Nations of Canada. In 1852 their numbers were "1,100, or nearly the present number of the Ameri- "can Saint Regis Indians. By a provision of the

328 "first constitution of New York, adopted April
"26, 1777, no purchases or contracts for the sale
"of lands by the Indians since the 14th day of
"October, 1775, were to be valid unless made with
"the consent of the legislature. Among the docu-
"ments in the possession of the nation at the pres-
"ent time none are more prized than the treaty
"made May 4, 1797, exemplified, signed and sealed
"by John Jay, Governor, February 28, 1800."

Page 40, Ex. 1 & A.; page 475 of C. R.:

"The peculiar credit which the Six Nations at-
329 "tach to all preserved treaties, however old or
"superseded, developed during the census year a
"new departure in the Saint Regis plan of self-
"government. The old or pagan element among
"the Onondagas, supported by Chief Daniel La-
"Forte, Thomas Williams, keeper of the wampum,
"and others, maintained that their rights to lands
"in Kansas and similar rights rested upon treaties
"made between the Six Nations (exactly six) and
"the United States, and at a general council, held
"in 1888, the Saint Regis Indians were formally
"recognized as the successors of the Mohawks,
"thus restoring the original five, while, with the
330 "Tuscaroras, maintaining six. The theory was
"that an apparent lapse from the six in number
"would in some way work to their prejudice. The
"same element at once proposed the revival of the
"old government by chiefs, which had become ob-
"solete among the Saint Regis Indians. A meet-
"ing was held, even among the Cattaraugus
"Senecas, with the deliberate purpose to ignore or
"abandon their civilized, legal organization as the
"Seneca nation and return to former systems. The
"impracticability of such a retrogade movement
"did not silence the advocates for chiefship for the
"Saint Regis Indians. The election through

"families, after the old method, of 9 chiefs and 9 331
"alternate or vice chiefs was held, and these were
"duly installed in office by a general council,
"representing all the other nations. Practically
"and legally they have no power whatever."

Page 61 of Ex. 1 & A.; not in C. R.:

"Wampum associations must be exchanged for
"written law, and irresponsible chiefs must be
"held to strict account under intelligent codes,
"voluntarily adopted, under the sanction of the
"State, or by the interposition of the State in be-
"half of the people, who have no power to protect
"themselves." 332

Page 78 of Ex. 1 & A.; page 496, C. R.:

"The very names contrasted with those of other
"reservations, Webster, Hill, Thomas, Brown,
"Jones, Jacobs, and Lyons being English. Old
"John Adams, of the war of 1812, Abraham Hill,
"the honored Oneida chief, and Chief Theodore
"(Thomas) Webster, keeper of the wampum, bore
"their years with dignity, and were among the
"most interested of those present."

Page 79 of Ex. 1 & A.; not in C. R.:

"The alleged absurdity of the Six Nations of 333
"New York being a (nation within a nation) does
"not change the fact or nullify the sequence of
"actual history. This very fact opens to the In-
"dian and to the white man a way of relief, with-
"out the impairment of treaties or the disregard
"of any rights whatever.

'Accepting all that the most technical advocate
"of the Indians' claim to prolonged independence
"can advance, a higher and equally consistent
"principle of international law supplies the whole-
"some remedy.

"As contiguous nations must have political

334 " intercourse, and upon a basis of mutual benefit,
" so there must be, on the part of each, some
" representative authority to adjust conflicting
" issues between them. The absence of such au-
" thority, and the neglect or refusal of any people to
" place themselves within the range of mutual con-
" sideration of the rights of the citizens of both, is
" among all nations a *casus belli*. The remedy
" may not require arms, but a constraint equiva-
" lent to that of arms when actual rupture occurs
" is legitimate."

Page 80 of Ex. 1 & A., not in C. R.:

335 " THE TITLES TO INDIAN LANDS: Independent
" of the pre-emption lien of the Ogden Land Com-
" pany upon the lands of the Seneca nation, and
" absolutely as respects the Onondaga, Tonawanda,
" and Tuscarora Senecas, the Indians already hold
" their lands substantially in severalty. The
" theory advanced by many that these lands are
" so absolutely held in common that the people
" have no stimulus to improve them is founded
" upon an erroneous idea of law and fact. The
" same principle that underlies the English and
" therefore the American common law obtains
" here. It has been settled among the Six Na-
336 " tions beyond question that occupation, building
" upon, and improvement of land by consent of the
" authorities representing the whole people confer
" a title, practically in fee simple, excepting that
" it is inalienable to a foreigner; but it may be
" conveyed or devised within the nation, and that
" it is inheritable by the immediate and natural
" heirs in absence of a will, and that as a system,
" however crude in form, the distribution of land
" in case of death almost invariably follows its
" natural and just direction. The exceptions are
" not greater than in contests among the white
" people.

"It is equally true that when a party without 337
"land applies to the authorities for the formal al-
"lotment of land for improvement and cultivation
"permission to so select and improve land is
"almost always given. The national title has
"itself been a guarantee to each individual occu-
"pant that this perfect title in the nation is his
"to control as if he held a deed therefor, and that
"his use and disposal of said land cannot be dis-
"turbed. It is also true that there is public do-
"main enough on each reservation to give every
"family seeking it all the land needed, and that
"the disinclination to work, to improve land, and 338
"secure support therefrom is the only barrier to a
"rightful possession and use of said land. It is
"also a fact that this tenure is so fully recognized
"that no body of chiefs or ruling representatives
"of the Six Nations dare assert any right to dis-
"turb that tenure or prevent its sale or devise by
"the tenant, and that every case, so far as known,
"reported as a violation of this right by the peace-
"maker courts or by other authority upon the set-
"tlement of an estate or dispute as to adjoining
"boundaries or conflicting titles, has been ad-
"justed upon evidence, and not upon any assump-
"tion that the title was disposable at the choice 339
"of said court or chiefs. The judges and chiefs
"on each reservation unequivocally disclaim such
"alleged authority, and any assertion of the right
"would be ignored or resisted. Neither is there
"any existing usage, method, or power by which
"an assumption of authority so sweeping could be
"enforced."

Page 81 of Exhibit 1 and A, not in C. R.:

"THE NATURAL DISTRIBUTION.—The claim by
"some that the lands of the Six Nations shall be
"divided per capita or per stirpes, in severalty, is
"a form of communism, ignoring all the just

340 "equivalent of honest industry and asserting a
"prerogative of authority over the property and
"fruitful labor that no government in contact with
"the civilized world at present would dare assert,
"much less attempt, to exercise.

"There is not the faintest similarity between
"Indian occupation of any western reservation and
"the titles of the Six Nations to their lands. The
"United States and the State of New York, with-
"out anticipating the paramount authority of the
"federal courts, have the physical power to ignore
"treaties and contracts for which an adequate con-
"sideration has been paid; but nothing less than
341 "a casus belli, when all treaties end with conflict
"and might, establishes its false code of right in
"a new adjustment of relations between the
"parties, can furnish an excuse for such legisla-
"tion."

JOHN W. SANBORN, sworn for defendant:

Examined by Mr. Delehanty:

Q. Where do you reside? A. I reside in Frank-linville, this State.

342 Q. What is your vocation? A. I am a minister of the Methodist Episcopal denomination.

Q. How long have you been a minister of that church, or any church? A. Twenty-five years.

Q. Have you ever during your career as minister been assigned to any church attended by any of the descendants of the tribes of Indians known as the Six Nations? A. Yes, sir.

Q. When? A. In 1877.

Q. Where was the church located? A. The church, composed of white people, was located at Cowanda, in Cattaraugus County. In connection with that was the Seneca Indian Nation, to which

I was appointed by the then presiding bishop of 343
the Methodist Episcopal Church.

Q. How long did you remain there? A. The full term allowed by that denomination, three years.

Q. At that time did you become acquainted with the Seneca Indians? A. Yes, sir; somewhat.

Q. Did you study their language? A. I commenced to learn the language the first day I appeared among them.

Q. Did you familiarize yourself with the Seneca language, to speak it and write it, translate it into English? A. Yes, sir; fairly well.

Q. You composed a book of hymns, translated 344
from English into Seneca ~~hymns~~? A. Yes, sir.

Q. Were you, during your stay there, adopted among the Seneca Indians? A. Yes, sir.

Q. As a Seneca Indian? A. Yes, sir.

Q. Have you had anything to do with the Indians since that time? A. Yes, sir.

Q. Have you visited any of the other tribes of Indians? A. Yes, sir, I have.

Q. How many of them? A. All of them in the State of New York.

Q. Are you the John W. Sanborn referred to in the complaint in this case who was director of the Indian Exhibit at Chicago during the World's Fair 345
Exposition? A. Yes, sir.

Q. You are the gentleman who brought about the purchase of these wampum belts from Dr. Crane? A. Yes, sir.

Q. What have you done in connection with investigation of the history, tradition and customs of the Indians since the time your mission among them ceased? A. Well, I have studied such works as I could have access to, a large number of books and pamphlets which I have in my possession, and have been among the Indians a good deal.

346 Q. Attended their ceremonies of different kinds? A. Yes, sir.

Q. Talked with different members of Indian tribes? A. Yes, sir.

Q. Have you a large acquaintance among them at the present time? A. I have.

Q. Taken a great deal of interest in their affairs? A. Yes, sir.

Q. Have you settled disputes for them? A. Several times.

Q. Just explain the circumstances under which these wampum belts were purchased from Dr. Crane? A. I was invited to Albany by telegram
347 to meet some of the members of the Board of Commissioners of the State for the preparation of the Columbian Exposition, the State Exhibit. After arriving there they stated to me they desired me to take a membership and take charge of the Indian Exhibit. I asked leave of absence from the conference of the church to which I belonged, which was granted. Senator McNaughton was chief executive officer; that was his designation in the Board. I was put in charge of this work. At one of the interviews I had with him—I was in constant communication with him, and spent from
348 four to six weeks in Albany in the Winter of 1892-3 in preparation for the exhibit. It was necessary to read up such works and references as I could find in order to make plans for the bark houses; the construction of them was committed to me——

Q. Without interrupting—— we want to get at the wampum belts? A. I desired in these houses an exhibit of those wampum belts. Dr. Crane, whom I knew, wrote me that he had these belts, that he bought them of Gen. Carrington, who bought them of the Indians. He suggested in his letter it would be a proper thing for them to be within the bounds of New York State, that they

belonged within the bounds of New York State properly. I laid this matter before Senator McNaughton, and he took me into Mr. Thacher's office, which was in the next room, and laid the matter before him. Mr. Thacher stated he could not very well see how money could be taken from the appropriation made by the State, and yet wished that the wampum belts might be brought back to the State. My idea was that the Commissioners should buy the wampum or arrange for the purchase in some way. Mr. Thacher and Senator McNaughton held a few moments' conference together—I didn't hear what they said—and Mr. Thacher handed me a check. He asked me first what the price was. I told him what Dr. Crane's price was, $500, and he handed me the check. 349 350

Q. Is that the check which you refer to? (Handing witness paper). A. Yes, sir.

(Check marked Ex. B, F. J. M.)

"ALBANY, N. Y. March 24, 1893.

Albany City National Bank pay to the order of Oliver Crane, Esq. in full payment for wampum belt, Five hundred dollars 00/100. $500 dollars. JOHN BOYD THACHER.

John Boyd Thacher.

Endorsed as follows: Pay to the order of Mrs. Sibilla Bailey Crane, 351

OLIVER CRANE,

Pay to the order of Henry Bailey, SIBYLLA BAILEY CRANE.

HENRY BAILEY

ANDREAS BLUMM. (Bank stamps.)"

Q. You sent it to Dr. Crane? A. He requested me to send it to Dr. Crane.

Q. Did you receive the wampum belts from Dr. Crane? A. Yes, sir. They were in the Art Museum at Boston. Dr. Crane was at Winter Park,

352 Florida. He sent an order to the curator of the Museum to ship them to me.

Q. You received them? A. Yes, sir.

Q. Took them to Chicago? A. Yes, sir. I should say to Albany first, to Mr. Thacher, turned them over to him.

Q. Were they afterwards exhibited at the Chicago Exposition during the whole time of the Fair? A. Yes, sir. I suppose during the whole time. They were exhibited. I don't know when they were put on exhibition; I presume at the commencement.

Q. They are the same wampum belts here in Court? A. Yes, sir; they are.

353 Q. Did you know Thomas Webster? A. I knew him; yes, sir.

Q. Did you ever have any conversation with him in regard to these wampum belts? A. Yes, sir.

Q. Did you ever see any other wampum belts? A. I did.

Q. Did he ever offer any other wampum belts for sale?

Mr. Paige: I object to that.

The Court: To the witness?

Mr. Delehanty: Offer to him or anybody in his presence.

The Court: I will take it.

354 Exception.

A. He had two other wampum belts. Mr. Thacher wished me to go to Webster and get from him an authoritative statement concerning the belts, the reading of them. At that time he offered two other belts to me, asked me if I would buy them.

By Mr. Paige:

Q. That was after the sale of these belts? A. Yes, sir.

Mr. Paige: I don't object, then.

The Witness: Daniel La Forte went with me and acted as interpreter.

355

By Mr. Delehanty:

Q. Mr. Webster spoke the indian language almost exclusively? A. Yes, sir; I think he could not speak English; Daniel La Forte acted as interpreter.

Q. Were you acquainted with Chief John Buck? A. Yes, sir.

Q. Who was he? A. He was the hereditary wampum keeper of the Six Nations, so called everywhere, residing in Canada, an Onondaga Chief.

356

Q. An Onondaga Chief residing in Canada? A. Yes, sir.

Q. Did you ever see any wampum belts in his possession? A. Yes, sir.

Q. Were they any of the wampum belts here in Court? A. No, sir; not these.

Q. Have you a photograph of the belts which you saw in his possession? A. Yes, sir.

Mr. Delehanty: I desire to offer the check marked Exhibit B in evidence.

The Court: All right.

(Witness produces photograph.)

357

By Mr. Delehanty:

Q. I show you a photograph?

Mr. Paige: It is the first picture which follows page 32 of Exhibit 1.

Mr. Delehanty: It is the original of the picture which Mr. Paige has just referred to?

Mr. Paige: Yes; the first picture which follows page 32 of what I have been calling Exhibit 1.

By Mr. Delehanty:

Q. Do you recognize in that group of persons the John Buck to whom you refer? A. Yes, sir.

Q. Which one is it? A. He is the person stand-

358 ing there (indicating). The third from the left and the fourth from the right.

The Court: The reporter may put a mark over his head.

(Mark placed above head of person designated.)

Q. Are the wampum belts exhibited in that picture the same as those which you saw in his possession? A. So far as they are defined; not all of them are well defined in the picture, although that was an original photograph.

Q. When did you see these wampum belts in his
359 possession? A. October, 1891; on the occasion of the unveiling of a monument to Red Jacket at , near Cayuga, in this State.

Q. Red Jacket was a Seneca chief during his lifetime? A. Yes, sir.

Q. This was at the ceremony of the unveiling of his monument? A. Yes, sir; a monument erected over what was believed to be his birthplace.

Q. Are you able to say, from your knowledge and observation and study of the affairs of these Indians, whether there is any such thing in existence at the present time as the Ho-de-no-sau-nee? A. From the information that I gathered among
360 Indians there is only a misty figment of it.

Q. Did you ever see an Indian other than Webster and Buck who claimed that these wampum belts had any authority among the Indians, or that they were depended upon for their history or record? A. Webster told me——

Q. Other than Webster? A. Indians, many of them, have stated on my inquiring, that these were not authoritative any more; that they had changed their form of government.

Q. Do you know whether or not the different Indian tribes here have changed their form of government to comply with the Indian law of the

State, having a constitution and by-laws the same as are authorized under the law? A. The Senecas, both the Cattaraugus and Alleghany Senecas have one government, a republican form of government, patterned after onrs. For the last—as I understand it—ten to twelve years, the Onondagas have been struggling into the same form of government. As to the other tribes the ancient form of government has never been abandoned; some of them are in a somewhat chaotic state, the Onondagas in particular. 361

Q. Do you know whether these wampum belts were looked upon by the Indians in any other way than as relics or curiosities? 362

Objected to.

Q. State, if you know, the manner in which the Indians referred to and looked upon these wampum belts, their significance?

Mr. Paige: I object, unless he gives the Indian, and what he said.

The Witness: Shall I give living and dead Indians, both, what they said?

The Court: Yes; give them both.

A. Well, Daniel LaForte, whose Indian name is Te-hes-ha, stated to me these were relics now, sort of heirlooms, like old spinning wheels, old almanacs, &c. That was the statement he made to me. Thomas Webster said—— 363

Mr. Paige: I object to that as hearsay. He is the man who sold the wampum.

The Court: I will take the evidence subject to your objection. I think, perhaps, it is hearsay, but I will take it subject to the exception.

Exception.

A. When I asked Webster to read these, explain the belts to me, I asked him if they were authoritative, and he said: "No; our people don't care any-

364 thing about them any more; we don't use them." Harrison Half-town, one of these Senecas on the Alleghany Reservation——

By Mr. Paige:

Q. Give the dates of those two prior conversations, if you can? A. Soon after Mr. Thacher bought the wampum belts.

Q. It was after? A. Yes, sir.

Q. Was the conversation with Harrison Half-town after also? A. Yes, sir.

Q. This receipt set up in the complaint, which purports to have been a receipt given for the wam-
365 pum belts, the subject of this controversy, was prepared by whom, if you know? A. Dr. Crane asked me to put into the receipt some reference——

Q. You prepared that receipt? A. Yes, sir.

Q. Did Mr. Thacher make any suggestions in reference to it? A. No, sir.

Q. You conducted the entire transaction for them? A. Yes, sir; he said the check would be a sufficient receipt for him.

Q. Prior to the commencement of this action, and on or about the 30th day of August, 1897, did
366 you have an interview with Daniel La Forte and his brother Thomas La Forte? A. Yes, sir.

Q. Where? A. On the Onondaga Reservation.

Mr. Paige: After the bringing of this action?

Mr. Delehanty: No; before the bringing of this action, the 30th of August, 1897.

Q. What, if anything, did he say with reference to any authority given by him to bring an action of this kind? A. I asked him if he knew that a suit was commenced. He said he gave no authority for the commencement of a suit, and said he did not suppose that was what he was signing as authority.

(Paper produced and marked Exhibit C, 367
F. J. M., for identification.)

Q. I show you Exhibit C, and I ask you if you know in whose handwriting that paper is? A. Well, sir, that is in my handwriting.

Q. When did you write that paper? A. It was August 30th, 1897.

Q. Where were you at the time? A. In the house of Daniel La Forte, on the Onondaga Reservation.

Q. What does that paper contain? A. It contains La Forte's statement to me in answer to questions which I asked him.

Q. And in regard to this suit, and the com- 368
mencement of this action? A. Yes, sir; and council of the chiefs, etc., and the wampum—the sale of the wampum.

Q. Is that his signature on the paper (indicating)? A. Yes, sir.

Q. Where? A. At the foot of it.

Q. What is the signature there? A. Daniel La Forte, President of the Six Nations, New York State Indians.

Q. Is that a correct statement of what he said to you on that occasion? A. Yes, sir. I didn't make that statement until he had given me the facts. I put them down and read them to him; asked him 369
if they were accurate; he said those were.

Q. He signed his name? A. Yes, sir.

Mr. Delehanty: I will offer it in evidence.

370 SUPREME COURT,

ONONDAGA COUNTY.

THE ONONDAGA NATION and TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the HO-DE-NO-SAU-NEE,

vs.

JOHN BOYD THACHER.

371

STATE OF NEW YORK, County of Cattaraugus, City of Olean, } ss.:

JOHN WENTWORTH SANBORN, being duly sworn, deposes and says:

I am the person mentioned and referred to in the complaint herein by the above name; I am now and have been for many years personally acquainted with Daniel LaForte, the President of the Onondaga Nation and the person referred to by the name of
372 Te-hes-ha, one of the plaintiffs in the above-entitled action; I am also, and have been for many years, personally acquainted with the Rev. Thomas LaForte, the brother of said Daniel LaForte, and a clergyman of the Wesleyan Methodist Church, also a member of the Onondaga tribe or nation of Indians. I am familiar with the handwriting of each of said persons; the signature subscribed to the paper dated August 30, 1897, hereto annexed and marked "Exhibit A," was made by Daniel LaForte, in the presence of deponent, on the date above mentioned; the signature subscribed to the paper dated August 30, 1897, hereto annexed and

marked "Exhibit B," was made by Thomas LaForte 373
in the presence of deponent on the date above mentioned. Both Daniel LaForte and Thomas LaForte, who signed said papers respectively, are and each of them was perfectly familiar with the contents thereof at the time of subscribing the same and their action in so subscribing said papers was their free act and deed.

JOHN W. SANBORN.

Subscribed and sworn to before me }
this 9th day of June, 1898. }

WM. V. SMITH,
Notary Public. 374

[SEAL.]

Exhiblt A.

STATE OF NEW YORK, }
Onondaga Reservation, } August 30, 1897.

I, DANIEL LA FORT, President of the Six Nations of New York State Indians, do hereby certify that in the Onondaga Council there are twenty-three (23) chiefs, and twelve (12) constitute a quorum. Mrs. Converse wanted the chiefs called together. Only five (seven less than a quorum) were present. She urged them to authorize her to make a demand 375
for the wampums which had been sold. It was in no way a legal proceeding. I, as President of the Onondaga Nation, presided over the meeting, but I did it to please the others (the five men and Mrs. Converse). The meeting adjourned because there was not a quorum present, & its acts could not be legal.

Some time ago Mrs. Converse bought one or more wampum belts of Thomas Webster, the wampum keeper. Lucy Pierce was present when the purchase was made. The Indians do not know what

376 she did with them. We do not use the wampum any more. They are only a relic now. The old customs are fading away, and, as we do not use the wampums as of old, we don't have as much interest in them. Mrs. Converse is not a chief and never has been. She is not the originator of any new society of, or for, Indian women, for there is no such society or order among our women.

The demand which Mrs. Converse makes (a copy of which is hereto annexed) of the wampum belts described in the letter (a copy of which is hereto annexed) cannot be made on behalf of the Ho-de-
377 no-sau-nee, for the Ho-de-no-sau-nee is the name given to the League of the Six Nations (meaning the Long House). When the Seneca Nation adopted a municipal form of government a few years ago its connection with the League ceased, and its interest in the wampum ceased also.

I certify further that Harriet Maxwell Converse, whose name purports to have been subscribed to the paper (a copy of which is hereto annexed), had and has no legal authority to represent the Onondaga Nation in the matter described in said paper, and had and has no legal authority to demand in behalf of said Onondaga Nation the delivery of the
378 wampum therein described, or to represent said Onondaga Nation or any of the Nations constituting the Six Nations of Indians of New York State as its attorney, in fact or otherwise.

I certify further that Hon. John Boyd Thacher came honestly and fairly into possession of the wampums which he has by purchase from a white man; who, in turn, bought them of General Carrington, U. S. Army; who, in turn, bought them of the late Thomas Webster, from whom Mrs. Harriet Maxwell Converse bought hers. The wampums which are in Washington & Albany are in

safer hands than if they were kept on the reservation, and they should remain where they are. 379

(Signed,) DANIEL LA FORT,
President of the Six Nations of N. Y. State Indians, & also President of the Onondaga Nation.

Signed in the presence of
JOHN W. SANBORN.
No. 248 WEST 15TH ST.,
NEW YORK CITY, August 17th, 1897.

SIR:

The Onondaga Nation does hereby demand the delivery to it of the following wampum: 380

One Belt of dark wampum beads representing the "Confederation organization of the Five Nations under Hiawatha."

One Belt representing the first treaty stipulation between the Six Nations and General Washington, picturing in wampum bead-work, the Council House, General Washington, the To-de-da-ho, and thirteen representatives of the States.

A Fragment of a belt representing the first approach to the Indians of the "People with white faces."

A Fragment of a narrow belt representing the unity of the Five Nations. 381

The first two being the same wampum which were on exhibition at the World's Fair at Chicago, and there described as "Loaned by John Boyd Thacher."

This demand is made upon the ground that the above-described wampum is the property of the Ho-de-no-sau-nee, and that the Onondaga Nation is either its owner or its official custodian.

THE ONONDAGA NATION,
(by) HARRIET MAXWELL CONVERSE,
Its Attorney in Fact.

To JOHN BOYD THACHER.

382 **Exhibit B.**

ONONDAGA RESERVATION, Aug. 30, 1897.

Rev. Thos. La Fort, brother of President Daniel La Fort, makes the following statement over his own signature:

"Mrs. Harriet Maxwell Converse has no legal authority to demand wampums on behalf of the Onondagas. Her so-called power of attorney is not legal. No quorum of chiefs was present at the meeting which she alleges gave her power of attorney; And, moreover, even if every chief had been present and had voted to give Mrs. Converse power
383 of attorney it would not have been a legal proceeding, because it is utterly contrary to Indian law and usage to delegate such authority to a woman, and a white woman at that."

I, Thomas La Fort, pastor of the Wesleyan Church, Onondaga Reservation, have read the above statement over and do hereby subscribe to the truth of it.

THOMAS LA FORT.

Signed in the presence of
JOHN W. SANBORN.

384 *Cross-examination by Mr. Paige:*

Q. How long have you known Dr. Crane? A. Dr. Crane I have known about eleven years.

Q. About eleven years now? A. Yes, sir; about eleven years ago I made his acqaintance.

Q. That would be before 1890? A. Yes, sir.

Q. I think you stated he was a Presbyterian minister? A. He was missionary of the Presbyterian Church, I think, to Syria for some twenty-five to thirty years.

Q. At the time the wampum belt came to Mr. Thacher, in 1893, where was Dr. Crane living? A. His home was in Boston.

Q. When did you first hear he had the wampum belts? A. He wrote me some months previously; I don't know how long. 385

Q. How long had he been living in Boston? A. That Summer. He had a Winter home at Winter Park, Florida, but resided in Boston a greater part of the year.

Q. For how long before that? A. I could not say.

Q. Tell us as near as you know? A. My impression is that he returned to Boston on the ocean steamship, where I met him; was returning home when I met him. 386

Q. That was when? A. 1886, I think.

Q. After that he lived in Boston and Florida? A. So far as I know.

Q. Did you know General Carrington? A. Yes, sir.

Q. When did you first meet him? A. I met him in 1890.

Q. When he was taking the Indian census in New York? A. Yes, sir.

Q. Do you know where his residence was? A. No, sir; I don't know where his residence was at that time; he came from Washington. I had the impression he was detailed by the Government, the 387 United States Government.

Q. How long was he in New York at that time? A. New York State?

Q. Yes? A. That I don't know.

Q. After 1891, after he finished the census? A. I think he told me that he took about eight months to take this census.

Q. Where did he go then? A. I am sure I could not tell.

Q. You don't know? A. No, sir.

Q. Did your acquaintance cease after that? A.

388 I had some correspondence with him at Hyde Park, Massachusetts.

Q. In what year? A. It must have been about the time or just previously to the sale of the wampums.

Q. Do you know when he sold the wampum to Dr. Crane? A. I am not sure, but I will give you my impression, if that will do.

Q. Yes. A. My impression is that he sold them to Dr. Crane soon after he completed the census.

Q. How soon? A. Well, I should think, within two or three months; I should judge so.

389 Q. I think you stated that you applied to Senator McNaughton to purchase the wampum because of a letter you received from Dr. Crane? A. Yes, sir; I received many letters from Dr. Crane in a social, friendly way. We were on shipboard together. In one he mentioned these wampum belts.

Q. You were on shipboard together some years before? A. Yes, sir; in that way we became acquainted.

Q. In one of those letters he mentioned these wampum belts. That would be when, in the Winter or Spring of 1893—early Spring? A. It was before that. I can tell just when. I was in Lock-
390 port. It was about one year or one year and a half after I met Dr. Crane on shipboard. I received several letters from him; and then immediately after the census was taken by Gen. Carrington—very soon after; I should say within a few months—I received a letter from Dr. Crane in which he stated he had purchased some wampums, which he considered very interesting and valuable.

Q. It was within a few months after the completion of the census by Gen. Carrington? A. That is my impression; it was not a great while after that.

Q. When was it you received a letter which led

you to go to Senator McNaughton? A. That was 391
in the Winter, I think, of 1892.

Q. 1892–3? A. Yes, sir.

Q. I think you said he took you to Mr. Thacher? A. I read an extract from a letter to Senator McNaughton; I had a desk in his office. We went right into Mr. Thacher's room immediately, and he laid the matter before Mr. Thacher. They mutually agreed that there was no appropriation by the State for the purchase of any such things, and they conferred together a little longer. Mr. Thacher then handed me this check and said, "You attend to this and send for the wampum belts." 392

Q. So that the wampum belts had not been received by you or by anybody? A. Not at that time.

Q. Not at the time he gave you the check? A. No, sir; immediately after receiving Dr. Crane's letter Senator McNaughton asked me to go to Boston and examine those wampum belts to make sure they were authentic, and that the statement concerning them was authentic, and that they were there as described.

Q. Where were they? A. In the Boston Art Museum, loaned by Dr. and Mrs. Crane.

Q. This was after you got the check? A. No, 393
sir.

Q. When was it? A. After I received the letter from Dr. Crane, describing the belts quite fully, and suggesting they ought to be within the bounds of New York State. The Senator asked me to go down there and examine them, take their measurements, get an accurate description of them.

Q. You did? A. I did so.

Q. Then what did you do? A. I returned and laid before him a description of the belts which I made. It was immediately after that that the check was drawn, after I reported on the belts.

394 Q. After you reported on them, and before they had been received? A. Yes, sir.

Q. I read what purports to be a copy of a letter written by you to Doctor and Mrs. Crane:

"WORLD'S FAIR.
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
INDIAN EXHIBIT OF THE STATE
OF NEW YORK
at the
WORLD'S COLUMBIAN EXPOSITION.

395 "THE CAPITOL, Albany, N.Y.....189..
Naples, N. Y., March 7, 1893.

DEAR FRIENDS,

DR. AND MRS. CRANE:

The precious wampum came in good order on Saturday and will soon be shipped with our other curiosities to Chicago, and will add very much to the interest of the N. Y. Indian Exhibit. I will see to it that the descriptions are in larger type, and printed in fine style, giving the history of the past and the recent history as well, so as to set forth all the interesting facts in connection with the wampum.

396 I enclose a form of receipt which, on receipt of the money due you, you may if you please sign unless the Senator should make out a form. It will not be necessary to make two copies except for historical interest.

Concerning my type-writer, I would say it is a Remington, No. 2, and works perfectly and rapidly.

I am to have a picture of these wampums taken, and engraved for insertion in my History of the Six Nations, and I shall there give the history of it and make note of our purchase of it from you and Mrs. Crane. I am almost engulfed

with work, but it is a pleasure to stop to write 397
to you.

Sincerely yours,
JOHN W. SANBORN.

P. S. I did not date the receipt. I will leave that to you to do when the money arrives.

Yours,
J. W. S."

Q. Did you write that letter? A. Yes, sir.

Q. Enclosed in it, as I am informed, was a receipt, of which I am informed the following is a copy: 398

"RECEIPT FOR WAMPUM.

WORLD'S FAIR
Office of
JOHN WENTWORTH SANBORN,
Director-in-Chief
of the
INDIAN EXHIBIT OF THE STATE
OF NEW YORK
at the
WORLD'S COLUMBIAN EXHIBITION.

THE CAPITOL, Albany, N. Y., ..., 189..

Received from Hon. Donald McNaughton, Chief Executive Officer of the Board of General Managers of the New York Exhibit at the World's Fair, and John Wentworth Sanborn, Director-in-Chief of the New York Indian Exhibit at the World's Fair, acting for the State of New York, Five Hundred Dollars ($500.00) for one case of four Wampum Belts, as follows, viz.: One Belt of dark wampum beads, representing the Confederation organization of the Five Nations under Hiawatha; One Belt representing the First Treaty stipulation between the Six Nations and General George Washington picturing in Wampum bead-work the Council House, General Washington, the O-do-ta-ho, or President of the tribes, and thirteen representa- 399

400 tives of the Colonies; also two fragments of other Belts, one representing the first approach to the Indians of the 'People with white faces,' and the other a narrow belt representing the unity of the Five Nations."

Did you enclose that receipt in that letter? A. Yes, sir.

Q. That receipt, I suppose, describes these four belts according to your idea of them? A. Well, in a general way, so it could be understood, I thought.

Q. Which of those four belts is "One Belt of
401 dark Wampum beads, representing the Confederation organization of the Five Nations under Hiawatha"? A. The widest one here (indicating).

Q. The large belt on the diagram in Exhibit 1? A. Yes, sir.

Q. Which is the belt "Representing the First Treaty stipulation between the Six Nations and General Washington, picturing in Wampum beadwork, the Council House, General Washington, the O-do-ta-ho, or President of the tribes, and thirteen representatives of the Colonies"? A. This is the one (indicating).

Q. That is the upper belt on the diagram already
402 described in Exhibit 1. Which is the belt representing "The first approach to the Indians of the 'People with white faces'"? A. This one (indicating).

Mr. Paige: The lowest one on the diagram on Exhibit 1.

Q. Which is the narrow belt "Representing the unity of the Five Nations"? A. This one (indicating).

Mr. Paige: That is the other belt on diagram, Exhibit 1.

Q. I suppose you then believed when you wrote that receipt that the first belt which you referred

to was a Five Nation belt contemporary with Hiawatha? A. That was my understanding of it. 403

Q. It is now, is it not? A. Yes, sir.

Q. You then believed that at that time it was the property of the Five Nations? A. It is one of the wampum belts which has been retained among the Five Nations.

Q. Did you believe that it was at the time of Hiawatha, the property of the Five Nations? A. I believed that it was made to commemorate that event.

Q. By the Five Nations? A. As to who made it I never have been able to swear positively. 404

Q. I do not suppose you can swear positively, but I want your belief? A. I have had the impression that the Indians made it.

Q. You mean that the Five Nations of Indians made it? A. Some of them.

Q. Yes; some of them. It was used to commemorate the union of the Five Nations? A. Yes, sir.

Q. That is your belief also regarding the last belt described, the narrow belt? A. Why, yes; my impression is that that was made to commemorate the union of the Five Nations.

Q. Your belief in regard to the belt which you have thirdly described was that it was made by the Five Nations, or some of them, to represent the first approach of Indians to "People with white faces?" A. My impression about that is that either they made it or the French helped them make it; it was to commemorate that event. If the French made it, they gave it to them, I suppose; it was certainly in possession of one of the chiefs of the Five Nations. 405

Q. Your belief is that it was made contemporary with the first approach to the Indians of the "people with white faces" and to commemorate

406 that approach? A. That was my impression from the information given.

Q. It is yet? A. I know nothing to the contrary.

Q. Your belief in regard to the belt secondly described was that it was made to commemorate the treaty between the six nations and Gen. Washington? A. It was a commemorative belt. I never regarded that as an official belt of that occasion.

Q. Whether it was to commemorate—— A. Yes, sir. I regard that as a belt commemorating the event.

Q. And made about that time? A. Yes, sir;—
407 why, I should presume so.

Q. In the receipt which you sent to Dr. Crane you say that you received from Hon. Donald McNaughton and for yourself, acting for the State of New York, five hundred dollars. Was it your intention that that purchase should be made by the State of New York when you sent that receipt? A. I can tell you my own wishes; I was anxious to have those wampum belts on exhibition somehow under the authority of the State or someone acting for the State, in our bark houses. I went to Senator McNaughton with that desire, supposing that it would be possible for the State, out of
408 the appropriation, to buy those wampum belts. I was not particular as to who owned them if only they could be within the bounds of this State, where they could be on exhibition. That was my ruling desire under the whole thing. That is the reason why I went to these gentlemen and laid this matter before them, saying that I desired that these wampum belts should be back within the bounds of this State, where it seemed they belonged, as the Indians were within this State. They were to be represented at the Exposition. I asked the Senator if it was not possible for the State to buy

those wampum belts. I had that expectation— 409
that the State would buy them, so I laid it before him. And, as I stated, it was not within the——

The Court: That part of it you have covered.

Q. When you sent this receipt did you intend, and intend Dr. Crane to believe that the purchase was to be made by the State of New York? A. Dr. Crane wrote me and said——

Q. Answer my question. A. Repeat it again.

Q. At the time you sent this receipt, was it your intention and did you intend Dr. Crane to believe that the purchase was to be made by the State of New York? A. I ought to be allowed to explain 410
just ahead of that a word.

Q. Well, I have no objection to your explanation if yon won't take an hour about it. A. Dr. Crane requested me to write a receipt which would show some connection of the Board with this transaction as a sort of souvenir, for historical purposes. I think he stated about that in his letter. I drew the receipt supposing—I didn't read the check carefully to see whether it was signed John Boyd Thacher as commissioner, or John Boyd Thacher; I simply glanced at the name and saw it was all right, and sent it to Dr. Crane as requested. I had an impression that the Board of Managers 411
might come into possession of that when it came on. I was not particular whether——

Q. Is that all the explanation you have to make of that? A. That was exactly the case.

Q. Is that all the answer you want to make to my question? A. If that isn't clear——

Q. If you have anything else to say about it, say it. A. You asked me——

Q. The question I asked you was whether you intended and whether you meant Dr. Crane to believe that the purchase was to be made by the State of New York and not by anybody else?

412 That is the question I want you to answer. If you have any other answer to make, you better make it. A. I supposed that on behalf of the Commissioners, Mr. Thacher had authorized the purchase by the State.

Q. Is that all the answer you have got to make? A. That is the exact fact.

Q. All right. You said that the Onondagas were struggling to adopt some other form of government than their ancient style of government. Do you understand that the government is otherwise than by chief, as it has always been: A. It is by
413 chiefs, and yet they have been attempting to introduce modern methods.

Q. The government still is by chiefs, so far as you know? A. They have been making an effort——

Q. Is the government by chiefs? Does anybody but a chief have any voice in the government, so far as you know? A. In the latter government they have——

Q. Does anybody except the chief have any voice in the government of the Onondagas, so far as you know? A. Evidently not.

Q. The chiefs are appointed as they always have
414 been, are not they, so far as you know? A. They have adopted a constitution which is different from the old form.

Q. So far as you know, are the chiefs appointed as they always have been? A. Not entirely.

Q. What is the difference? A. They have adopted a constitution—twelve to fourteen years ago.

Q. Anything in the constitution about the appointment of chiefs? A. Yes, sir; there is an attempt to cut loose from the old form of government.

Q. Is there anything in the constitution about the way the chiefs shall be appointed? A. I don't

recall; I haven't it with me; I have a copy of it at home. 415

Q. But you don't recall? A. Not Precisely.

Q. If it is not in the constitution, is the chief appointed in any other way than as he always has been? A. I don't consider that they have——

Q. Will you please answer my question. So far as you know, if there is nothing in the constitution about the appointment of chiefs, are chiefs appointed by the Onondagas as they always have been? A. Not entirely as they always have been.

Q. What is the difference? A. The difference is, within a few years they adopted a different form of constitution. 416

Q. Is that all the answer you have to my question? A. I think that is all; yes, sir. If I had a copy of the constitution here I conld make it clearer.

Q. I don't care about a copy of the constitution. You said Chief John Buck was hereditary wampum keeper of the Onondagas. What did you mean by that? A. He descended from a man who was one of the peers of Hiawatha, as was claimed by him and admitted by others. I said he was hereditary wampum keeper of the Six Nations.

Q. By virtue of his descent from a man who was contemporary with Hiawatha? A. Not that only; they had some other things; there was a certain form gone through with. 417

Q. Somebody appointed him? A. They had what they call a "raising up" ceremony.

Q. Somebody appointed him? A. Yes, sir.

Q. Then he was not a hereditary chieftain? A. His hereditary rights, as they called them, were ratified.

Q. His hereditary rights which he had by virtue of his descent from a man who was contemporary with Hiawatha? A. It was not by virtue of his

418 descent from a man, but it was now with him; no man could be succeeded by his own son.

Q. Did you ever hear the Onondagas divided after the Revolution, part went to Canada and part stayed in New York? A. Yes, sir.

Q. Each kept up a separate tribal organization? A. The Iroquois Confederacy was not kept up much after the Revolution.

Q. Whether the Canada Onondagas kept up one tribal organization and the New York Onondagas kept up another? A. There was a sort of rival organization.

419 Q. Do you understand each one kept up or established any tribal organization separate from the other? A. In a measure they did.

Q. Each had its own wampum-keeper? A. John Buch claimed to be the only reputable wampum-keeper.

Q. The Canada Onondagas didn't have any wampum-keeper? A. They had one; he was not the wampum-keeper for the Six Nations.

Q. Did you ever hear when the Canada Onondagas went to Canada, that the two divisions or nations divided up the wampums, part of them went to Canada and the rest stayed here? A. Yes,

420 sir; there was wampum that remained in this State, but most of it went to Canada.

Q. Remained here with the Onondagas? A. Yes, sir.

Q. Some taken by the Canada Onondagas to Canada? A. Most of them.

Q. I suppose you counted them, so you know which had the most? A. John Buck had about a bushel of them.

Re-direct examination by Mr. Delehanty:

Q. Is that the way they counted wampum, by the bushel? A. No, sir; only I counted them that

way, because he put them in a Amoskeag seamless 421
sack, which made about a bushel.

Q. This receipt which you have been testifying concerning, which you sent to Dr. Crane, as I understand, was composed and ~~compared~~ prepared by you without any consultation with Mr. Thacher? A. Yes, sir.

Q. Do you know whether Mr. Thacher ever saw the receipt? A. I don't recollect about that.

Q. The statement contained in the receipt as to what these different wampum belts signified was your own statement? A. Yes, sir.

Q. When you say that this belt which I hold in 422
my hand was made to commemorate the treaty between Washington and the Indians, you mean that it was the treaty itself? A. That it was the treaty itself?

Q. Yes. A. No, sir.

Q. Do you mean anything more than that an Indian made that to indicate his idea of a treaty—a memorial in that way? A. That is the idea of it I have.

Q. Anything different from what an artist would do in representing what his idea or conception of some historical event might be? A. Substantially that; it was probably in those early days brought 423
out and exhibited.

Q. Was that the general impression prevailing among the Indians in reference to this particular belt? A. That is where I got my information; I made some inquiries, as many as I could.

Mr. Delehanty: We offered the deposition of Gen. Carrington in evidence. In it is a receipt which I will have marked.

Marked Ex. D., F. J. M.

DEFENDANT RESTS.

424 JOHN S. CLARK, re-called.

Examined by Mr. Paige:

Q. After the Revolution, as a result of your researches, and what you have been told, are you able to say whether the Onondagas divided? A. They did.

Q. What did they do? A. Those that followed the fortunes of the King of the British Government, settled on the Grande River Reservation in Canada; those who chose remained in the State of New York, under the State government and general government.

425 Q. Did each keep up its own separate tribal organization? A. Yes, sir.

Q. As the whole nation had formerly? A. Yes, sir.

Q. Did each have its separate wampum-keeper? A. It did; had an amicable division of the wampums, and the Indians on the Grande River Reserve in Canada relinquished any rights in the State of New York to the wampums. The general government held a treaty as a confederacy with the tribes which remained who chose to remain in the State of New York, held treaties with the individual

426 tribes and separate treaties with the Onondagas, separate treaties with the Oneidas and separate treaties with the Cayugas. And the general government held a treaty with the entire confederacy, the Six Nations of New York.

Mr. Delehanty: I would like to take an objection and ask to strike out the evidence on the ground that the witness has not been shown competent to testify, as to that portion of the answer which related to the disposition of the wampums——

The Court granted the motion. Exception.

Q. Is this belt, the upper one in the diagram

Ex. 1, a record of the first treaty between the Six Nations and the general government? A. That is my understanding of it. 427

Mr. Delehanty: Same objection.

The Witness (resuming): There could be no treaty with any tribe or with any confederacy without the exchange of belts of wampum. That is the general rule with all treaties, with all tribes, that if there was no wampum present, there was a pledge given it should be furnished thereafter. Sometimes it happened they could not furnish it at the time of the treaty; but no agreement was of any binding force whatever without an exchange of wampum on both sides. 428

Mr. Delehanty: I move to strike out the answer.

The Court: Same disposition.

Exception.

The Witness: In relation to the other matter I could explain a little further if it would be agreeable to both sides: about the time that we secured the photographs of these Onondaga belts I sent a copy to Mr. Hale of Clifton, Ontario County. He immediately went to the Reserve and secured the photograph which has appeared in this case—the original—I have not seen it here, but I have one at home; I have a copy of that original at home. And the other facts that I have stated—that is a common matter in numerous histories, especially in the archives of Canada and in the archives of the State of New York which have been published, and recognized in several instances by committees of the State Legislature. 429

Q. I think you said that you had made a study of Indian matters, examined into the sites of villages, visited Indian tribes—talked with them; have you also examined many historical works on the subject, and records and maps? A. All that

430 are accessible, sir. I have spent more than thirty years at it.

BAPTISTE THOMAS, sworn for plaintiffs:

Examined by Mr. Paige:

Q. You are a Chief of the Onondagas? A. Yes.

Q. And treasurer of the Nation? A. Yes.

Mr. Paige: I show the witness the four wampums in question.

Q. How long have you known these wampums? A. Between forty and fifty years.

Q. In whose possession were they when you first
431 saw them? A. My grandfather's.

Q. Who was he? A. Thomas Commissary.

Q. What office, if any, did he hold?

Mr. Delehanty: I object to that. Unless it relates to the office of wampum-keeper it is immaterial and irrelevant; if it does relate to the office of wampum-keeper there is no evidence to show that there was any such office in existence.

The Court: I will take the answer subject to the objection.

Q. What office, if any, did he hold? A. He was
432 another Chief.

Q. Was he wampum-keeper or not? A. Well, he kept it when they brought it from Buffalo; he was appointed to take care of it. After old Commissary died the chiefs got their heads together and held a council and left it to Abram LaForte to take care of.

Q. That is, De-hat-ka-tons? A. Yes, sir. After LaForte died old Harry Webster went over there——

Q. Wait a minute. Thomas Commissary was elected keeper of the wampum by the chiefs? A. Yes, sir.

Q. Those wampums were in his possession? A. Yes. 433

Q. You have seen them occasionally from that time ever since? A. Yes, sir.

Q. They were used at councils and conferences, I suppose? A. Yes.

Q. By Thomas Commissary? A. Yes.

Q. And Abram LaForte or De-hat-ha-tons? A. Yes.

Q. And Harry Webster? A. Yes.

Q. I show you this picture in Exhibit 1. Do you remember all those wampums (indicating)? A. Yes. 434

Q. Were they all in possession of your grandfather at the time you describe? A. Yes.

Q. Is there any different method of appointing chiefs in your Nation now from what there always has been? A. The same way they do yet.

Q. The same way they always did? A. Yes, sir.

Cross-examination by Mr. Delehanty:

Q. Your name is Baptiste Thomas? A. Yes, sir.

Q. I show you Exhibit 6; I ask you if that is your mark and your signature on that paper? A. It must be; yes. As long as it is my name there would be a mark with it. 435

Q. On the 26th of February, 1896, was that signed by you in that way? A. Yes.

Q. And signed by the other persons whose names appear under yours? A. Yes; I guess they are.

Q. How many chiefs of the Onondaga Nation were there at that time? A. Thirteen or fourteen; somewhere along there.

Q. How many chiefs of the Onondaga Nation

436 were there? Not how many signed the paper? A. The number of them?

Q. Yes. A. There is about 24 living now.

Q. In whose handwriting is the portion of the paper above the signature, if you know? A. It must be that man (indicating Mr. Paige).

Q. How much was paid to you for signing the paper? A. For signing that?

Q. How much did you get? A. The whole amount what I got—I got $500.

Q. You got $500? A. Yes; the whole.

Q. Who gave you the $500? A. That man (in-
437 dicating).

Q. Mr. Richmond? A. Yes, sir.

Q. What did you do with the $500? A. Kept about a couple of hundred dollars.

Q. For your own use? A. Oh, no; for the Nation expenses.

Q. What did you do with the $500? A. The chiefs took it.

Q. What chiefs? A. The Indians.

Q. Didn't you take any of it for yourself? Didn't you keep any of it? A. Of course, what was left I kept.

Q. How much did you keep? A. $200.

438 Q. For your own purposes? A. No, sir.

Q. You kept $200? A. Yes, sir.

Q. What did you do with the $200 you kept? A. I paid debts with it. They were repairing the council house; we were in debt; we fixed over the council house.

Q. Didn't you keep any of it for your own purposes? A. No, sir. It was not my business.

Q. I didn't ask you whether it was your business. Didn't you buy any horses or wagons? A. No, sir.

Q. Or anything else for your own use out of that money? A. No, sir.

Q. You say you spent $200 in repairing the council-house? A. Yes, sir. 439

Q. What did you do with the other $300? A. Paid the rest of the Nation debts and gave it to our poor people; helped them right along.

Q. Is it a fact that each of the persons who were present on that occassion and signed that paper took $25 out of that money? A. I guess they did.

Q. They did, didn't they? A. Yes.

Q. Kept it, each one of them? A. I did; I don't know what they done.

Q. But they got it? A. I paid them.

Q. You paid them $25 apiece out of the money? 440
A. Yes: that is just what a chief is entitled to.

Q. They decided they should have $25 apiece? A. Yes, sir.

Q. They signed these papers, selling the wampum belts to the State of New York?

(No answer.)

Q. Is that right? A. No; I guess not.

Q. Well, you signed this paper, whatever it is? A. Yes, sir.

Q. Where did you hold that council? A. Right there at Daniel LaForte's house.

Q. At what time of day was it? A. Along in the afternoon. 441

Q. Wasn't it late in the night? A. No, sir.

Q. Did yot notify all the chiefs to be present? A. Yes. Of course, the marshal went around, and notified every one to come.

Q. Who was the marshal who notified every one to come? A. Jim Palmer.

Q. When did he notify them, the same day? A. Oh, no; two or three days beforehand.

Q. Who else was present when you had this council or meeting, when you signed this paper, besides the persons whose names appear on the paper? A. Daniel LaForte was one.

442 Q. Was Mr. Paige present? A. Yes, sir.

Q. Was there anybody else besides the chiefs present? A. Yes, sir; This gentleman over there, (indicating).

Q. Mr. Richmond? A. Yes, sir. And the lady over there (indicating).

Q. Mrs. Converse? A. Yes, sir.

Q. Anybody else? A. No, sir.

ADELBERT G. RICHMOND, sworn for plaintiffs.

Examined by Mr. Paige:

443 Q. Your residence? A. Canajoharie.

Q. Your business? A. Banking.

Q. You are also honorary curator of the State Indian Museum? A. Yes, sir.

Q. Were you present in Onondaga with Mrs. Converse and myself in August, 1897, at a time when a certain paper was executed by certain chiefs? A. Yes, sir.

Q. Have you got that paper? A. I have not with me.

Q. You have got it? A. I have it.

Q. Where? A. At home in the bank vault.

Q. In the vault of the bank? A. Yes, sir.

Q. Did you sign that paper as a witness? A. I
444 did.

Q. Did the chiefs, whose names purport to sign it, sign it in your presence? A. Yes, sir.

Mr. Paige: I put the question in that way with Mr. Delehanty's permission. I will produce the paper hereafter.

Mr. Delehanty: I have not seen the paper, but it is to go in afterwards.

(To be printed.)

Cross-examination by Mr. Delehanty:

Q. Who prepared this paper which you have referred to? A. I should say Mr. Paige wrote it.

Q. Did you request the persons who signed it, 445
to sign it? A. No, sir; I think not.

Q. Where were they when they signed it? A. At Daniel LaForte's house.

Q. How many persons signed it? A. I really can't tell you that.

Q. Who asked you to go there and have it signed? A. Well, it was an arrangement between Mr. Paige, Mrs. Converse and myself to go there.

Q. Mr. LaForte, or the other people who signed the paper, did not request you to go there? A. They did not; no, sir.

Q. How long have you known Mr. LaForte? A. 446
Two years, perhaps.

Q. Did you know Mr. Webster? A. I have seen him; I don't know him; I never talked with him.

Q. Did you buy any wampum belts from him? A. No, sir.

C. Have you not purchased wampnm belts that are now in the New York State Library at Albany? A. Yes, sir.

Q. Where did you purchase them? A. I think those were purchased through Mrs. Converse.

Q. Of whom? A. Different ones.

Q. Different Indians? A. Yes, sir.

Q. Among the Onondaga Nation? A. I can't 447
tell you about that. I don't know.

Q. How many belts were purchased? A. Well, upwards of ten.

Q. They were purchased before this paper, which purports to have been executed on the 26th of February, 1898, was actually executed? A. I should say some of them were.

Q. They were in possession of the people claiming to represent the University? A. Whatever the paper showed.

448 **D.**

New constitution of the Onondaga Nation of Indians residing upon the Onondaga Indians Reservation in the County of Onondaga in the State of New York for the purpose of securing to take a better protection and more perfect satisfaction in the manner of intercourse between foreign nation and at home, viz: We therefore, the chiefs of said nation of Indians, adoped the following rules and Regulation this ninth day of July in the year of our Lord 1896.

449 1st. The chiefs of the Onondaga nation of Indians shall have power to elect President Secretary Treasurer and marshal and they shall be elected annually from amongst those number of the chiefs of said nation.

2nd. The sachem chiefs shall be enrolled in the Book of records, which shall be kept by the secretary of the nation in each meeting of the chiefs; roll shall be called by the secretary of the nation, eight of there number of the chiefs shall constitute a Quorum for the transaction of national business; the chiefs whose age under twenty-one years of
450 age shall not be entitle seat in council and to all Bills for the appropriation of public moneys the assent of eight of the chiefs in council shall be necessary in order that the bill should become a law.

3rd. The annual meeting of the chiefs for the electing President secretary treasure and marshall shall be held annually July 9 in each year.

4th. It shall be the duty of the President treasurer secretary and marshall to Preside at all the meeting of the chiefs, having only a casting vote in case of a tie and to communicate to the council at

every session of statement of the condition of the 451
national business.

5th. It shall be the duty of the secretary to keep the minutes of the proceedings of the council and to draw his warrants on the treasurer and to keep register of the same for all moneys appropriated and to cause such warrants to be the duty signed by the president and secretary and deliver them who are entitled thereto.

6th. It shall be the duty of the president and secretary of the public national land and stone quarry the assent of eight of the chiefs in council 452
shall be necessary to leased and signed by the President secretary and treasurer and the Agent shall draw the agreement between the parties; the treasurer shall furnish a bond for Five hundred dollars to be deliver before the councillers and the bond shall appear before the councillers of accept him shall be final.

7th. No person or persons who are not members of the Onondaga nation of Indian shall have a right to become as members or receive the annuity money without the consent of the councillers or any chiefs or sachem who may received money by Bribery 453
and said the council shall be the duty amongst the chiefs to dispose him.

The foregoing rule and regulation adopted by the chiefs of the Onondaga Nation of Indian on this ninth day of July in the of our Lord 1896.

OFFICERS.

President, BAPTIST THOMAS,
Vice-President, ANDREW GIBSON,
Secretary, DANIEL LAFORT,
Treasurer, WILSON REUBEN,
Marshal, SIDNEY ISAAC.

454 We the undersigned chiefs and sachem do hereby declare approved and indose the foregoing rules and regulation adopted.

1—Babtist Thomas,
2—Orris Farmer.
3—William Webster.
4—Wilson Reuben
5—Charles Lyons.
6—Andrew Gibson,
7—John R. Farmer,
8—Daniel LaFort,
9—Emmett Lyon,
455 10—Albert Kennedy,
his
11—Hawley x Hill
mark
his
12—Frank x Logan
mark
13—Asa Wheelbarrow
14—George Crow,
his
15—Jacobs x Big Bear
mark

E.

456 The Onondaga Nation does hereby authorize Harriet Maxwell Converse to recover all wampum of which it ever was in possession and all to the possession of which it or any of the Chiefs or Sachems or its Wampum-keeper or the Wampum-keeper of the Five Nations or the Six Nations was ever entitled, and to that end does make her its attorney in fact, and authorizes her to employ counsel to sue in the name of the nation in all courts and to use all other means.

Done by us the chiefs and Sachems in full and

regular council assembled in the Onondaga Reservation, this thirteenth day of July, 1897. 457

DANIEL LAFORT,
ORRIS FARMER,
CHARLES LYON,
JOHN FARMER,
JACOBA SCANADOAH,
BAPTISTE (x) THOMAS,
JARVIS (x) FARMER,
Marshall of the Nation.

A. G. RICHMOND,
(Witness as to the two marks above).

458

F.

SUPREME COURT,

ONONDAGA COUNTY.

The ONONDAGA NATION and TEHES-HA, an Onondaga Indian, on his own behalf, and also on behalf of all of the HO-DE-NO-SAU-NEE, 459

Plaintiffs,

vs.

JOHN BOYD THACHER,
Defendant.

SIR:

I have been retained by and hereby appear for the defendant John Boyd Thacher in the above-entitled action, and hereby admit service of a copy

460 of a summons and complaint therein, also a copy of an affidavit purporting to have been made by one Harriet Maxwell Converse, a copy of an undertaking purporting to have been executed by one Adelbert Gillette Richmond, and a copy of an order purporting to have been signed by Alonzo P. Strong, County Judge of Schenectady County.

All papers herein may be served on me at my office in the Commercial Bank Building, Albany, N. Y. My post-office address is Commercial Bank Building, Albany, N. Y.

Dated: Albany, N. Y., October 9th, 1897.

461 JOHN A. DELEHANTY,
Attorney for Defendant.

To EDWARD WINSLOW PAIGE, Esq.,
Plaintiffs' Attorney,
Office and Post Office address:
44 Cedar Street, New York City.

EVIDENCE CLOSED.

This case contains all the evidence.

462

The Court at the request of the plaintiffs then found as fact as follows: 463

"The four wampums described in the complaint; "the four wampums exhibited by the defendant in "Chicago; the four wampums produced by the "defendant upon the trial, and the four wampums "referred to in the decision of the Court, are the "same, and are in the possession of the defend-"ant."

On reading and filing the annexed consent it is ordered, that the case on appeal as above printed be filed as the true and correct case on appeal herein. 464

FRANK H. HISCOCK,
J. S. C.

We consent to the entry of the above order.

JOHN A. DELEHANTY.
Attorney for defendant.

EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

465

466 SUPREME COURT.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, SHO-HEH-DO-NAH, HA-ON-WEN-GO-WENLE, and JARVIS FARMER, Onondaga Indians; HO-DO-OH-GO-AH, a Seneca Indian; HA-JA-AH-GWYSH, a Cayuga Indian, and the UNIVERSITY OF THE STATE OF NEW YORK,
467 plaintiffs,

against

JOHN BOYD THACHER,
defendant.

SIRS:

You will take notice that each plaintiff separately appeals to the Appellate Division of the Supreme Court for the Fourth Department from the
468 judgment entered in this action in Onondaga County Clerk's Office on the twenty-sixth day of December, 1899.

Yours very truly,
EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

To the honorable
JOHN A. DELEHANTY,
Attorney for defendant; and
The CLERK OF ONONDAGA COUNTY.

Waiver of Certification.

469

It is hereby stipulated that the appeal book, as above printed, contains true and correct copies of the notice of appeal herein to the Appellate Division, the judgment appealed from, the exceptions thereto, and of all the papers on which the Court below acted in making such ~~decree~~ judgment, on file in the office of the ~~Surrogate~~ Clerk of the County of ~~Westchester~~ Onondaga, and all the evidence taken and proceedings had upon the hearings herein, and of the case.

Certification hereof, in pursuance of Section 1353 of the Code of Civil Procedure, or otherwise, is hereby waived. 470

Dated Albany, 30 December, 1899.

JOHN A. DELEHANTY,
Attorney for defendant.

EDWARD WINSLOW PAIGE,
Attorney for plaintiffs.

471

THE ONONDAGA NATION *et al.*

against

JOHN BOYD THACHER.

Action to recover the possession of four wampum belts obtained by defendant through intermediate transfers from an Onondaga Indian.

473

E. W. PAIGE, for Plaintiffs.

JOHN A. DELEHANTY, for Defendant.

HISCOCK, *J.*:

The object of this action in brief is to have it adjudicated that the Indian League of Five Nations, composed of the Onondagas, Oneidas, Mohawks, Senecas and Cayugas, and afterwards made Six Nations by the addition of the Tuscaroras, used wampum belts to commemorate important events; that these belts by an association of ideas with them served the purpose of a history; that there
474 was an official of the League known as wampum keeper, whose duty it was to preserve the wampums, and upon proper occasions to expound their meaning and significance; that the Onondaga Indian, from whom defendant's assignors obtained the wampums in suit, had possession of them as such wampum keeper; that such sale by him was unauthorized, and that the property having a peculiar and special interest not to be measured by money damages, this action may be maintained in behalf of the Indian Nations in question to in effect recover its possession.

The right of plaintiffs to maintain this action is

questioned upon many grounds, involving both the merits of their claim and technical features of the action. 475

It was not claimed upon the trial, and is not now by defendant's brief, that equity has not jurisdiction of such an action and might not upon proper facts render a judgment such as is sought here. And the authorities cited by plaintiffs' counsel sustain his contention that it has such jurisdiction.

Duke of Somerset, 2 Peere Wms., 380.
Pusey *vs.* Pusey, 1 Vern., 273.
Fells *vs.* Read, 3 Ves., 70.
Lloyd *vs.* Learing, 6 Ves., 773.
Earl of Macclesfield *vs.* Davies, 3 Ves. & B., 16. 476

It is, however, urged that a demand upon defendant for the delivery of the belts was a necessary prerequisite to the action. I think that view was right in this case and that no sufficient one was proved. In fact, my attention is called to none at all, and the argument of plaintiffs' counsel is that none was necessary.

Defendant purchased the belts for five hundred dollars, which certainly, in view of the prices paid by others for these and other ones, was not suspiciously low. There is nothing to impugn his good faith. On the contrary, he was induced by others, as a matter of public spirit, to make this purchase with his own funds to help the Indian Exhibit at Chicago, there being no public moneys available for that purpose. Accepting for the present plaintiff's version of the character of these belts and of their original custody by the Indians who sold them, defendant was not, in my opinion, chargeable with notice or knowledge thereof at the time of his purchase. He was a purchaser in good faith and for value and was entitled to the benefit of a demand before action was brought against 477

478 him. A prior demand might not be essential to some of the details of plaintiffs' prayer for relief, as that defendant be restrained from defacing or parting with the property, &c. But the substantial object of the action is to take from defendant the possession of the wampums.

None of the cases cited by plaintiffs' counsel are authority for dispensing with such demand.

In Pattison *vs.* Skillman, 34 N. J. Eq., 344, although that question was not discussed, it would appear that there had been a refusal to deliver the chattels after demand.

The same is true of Fells *vs.* Read, 3 Ves., 70.

479 And in many of the other cases cited by him it appears that the detention of the property sought was wrongful in its very inception, and in known defiance of the rights of those seeking it.

I see no renson why defendant in this action should not have the benefit of the same preliminary opportunity to voluntarily relinquish his possession after notice of plaintiffs' claims, to which he would have been entitled before an action at law.

Hovey *vs.* Bromley, 85 Hun, 540.

Gillett *vs.* Roberts, 57 N. Y., 28.

In addition to the plaintiffs originally named in
480 this action by order made upon the trial the following persons were brought in and by appropriate allegations made parties plaintiff, viz.: Sho-heh-do-nah, an Onandaga Indian; Ha-on-wengo-wenle, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-do-eh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and the University of the State of New York.

It is insisted that none of the plaintiffs, original or subsequently added, can maintain this action. So far as the University of the State of New York is concerned, this objection is addressed to its want of legal interest. In the case of the

others it is based upon an alleged lack of legal 481
status to maintain any suit in this Court.

Evidence was given of a purported transfer by certain alleged chiefs of the Onondaga Indians to the University of the State of New York of the wampuns in suit; also of certain proceedings upon the part of the same chiefs which purported to "raise up" such University as "wampum keeper," and thereby entitle it to the possession of the wampums.

The complaint is not framed for a recovery upon the theory of a sale of the wampums to said plaintiff. In fact such claim would be diametrically 482
opposed to the plaintiffs' theory of the action that such wampums were the property of the Six Nations and could not be bargained and sold. Neither has plaintiffs' counsel by his closing brief and argument at all pressed the other branch of the claim that said University had become interested as wampum keeper. Independant of defendant's contention that such duties would be quite outside of those for which said University is supposed to have been organized, there seems to me to be difficulties with the claim from the Indians' standpoint. In the light of all the traditions, not to say romance, which have been woven into this subject 483
of Indian history, the idea seems somewhat incongruous of the University of the State of New York as the final successor in a line of red-skinned and pagan wampum keepers reaching back beyond the days when Hendrik Hudson sailed up the North River. Tested also by the somewhat rigid and entirely unromantic rules of legal title, I am unable to find sufficient proof that the proceedings taken by the Onondaga Indians were sufficient to confer the position of wampum keeper, assuming that there is such an one.

This view limits the right of recovery, if any, to

484 the Indian plaintiffs, and leads to a consideration of the objections urged by defendant to the right of an Indian tribe or of individual Indians to sue.

It is not desirable to review at length all of the reasons and arguments which have been or may be advanced in favor of or against the right of a tribe or nation of Indians, as the Onondaga Nation, to bring suit. The weight of authority in this State seems to decisively settle the question in the negative.

In the first place, the Statutes of the State as collected and embodied in the Indian Law of 1892,
485 both by general provisions and by those specially relating to the Onondaga Indians, indicate the intent upon the part of the State to treat the Indians as wards, and, except when otherwise specially provided, to trust the protection of their rights as tribes or nations to its agents rather than to proceedings by themselves. Where it was deemed wise to have tribal action in relation to tribal rights, as in the case of trespasses upon tribal lands, and in the case of certain rights in "oil spring reservations," express authority is given for the prosecution of suits in the name of the "nation" interested. (Sections 11 and 55, Indian Law.) There
486 was, of course, no necessity for this if the general power was possessed by the different tribes or nations of Indians as such to bring suits.

In addition to this reasoning the subject is settled by direct adjudication.

Strong *et al. vs.* Waterman, 11 Paige, 607.

Senaca Nation *vs.* Christie, 126 N. Y., 122.

Montauk Tribe *vs.* Long Island R.R., 28 App. Div. 470.

But it is urged by plaintiff's counsel that even though an action may not be maintained by and in

the name of a nation or a tribe, individual Indians 487
have capacity to sue. In this I think he is correct. It is so indicated if not authoritatively adjudicated in

Strong *vs.* Waterman, 11 Paige, 607.
Montauk Tribe *vs.* L. I. R.R. Co., 28 App. Div., 470.
Crouse *vs.* N. Y. P. & O. R.R. Co., 49 Hun, 576.

Nor can I see any other reasonable interpretation of the Indian Law than that, except as otherwise expressly provided, an Indian has access to, and is subject to the juridiction of our Courts. 488
Section 2 of that statute provides that "An Indian shall be liable on his contracts not prohibited by law; and a native Indian may take, hold and convey real property the same as a citizen," &c. Section 5 provides that "Any demand or right of action, jurisdiction of which is not conferred upon a peacemaker's court, may be prosecuted and enforced in any court of the State the same as if all the parties thereto were citizens."

The disposition of these somewhat preliminary questions leads to a consideration of the substantial issue in the case. Are the wampum belts now in the possession of the defendant of the 489
character claimed by plaintiffs? Are they historical emblems constituting part of the annals of the Iroquois League formed long before the Revolutionary War and still existing? And have they been transferred by some wampum keeper in violation of his duties and obligations?

There is involved at the outset in the determination of this issue the consideration of the competency of a large portion of the evidence offered by plaintiffs. This consisted of extracts from Morgan's "League of the Iroquois," published in 1851, and Clark's "History of Onondaga."

490 The first of these works, so far as disclosed by the evidence, was a general history of the League and of the Indian nations or tribes composing the same, their government, laws, customs, &c. The second, although appearing by its title to be a history of one of these nations, did, as a matter of fact, as appears by the extracts offered, treat of matters pertaining to the entire confederation of the Five, or as it afterwards became, the Six Nations.

Some of these extracts offered in evidence relate to ancient times and are manifestly based upon
491 hearsay and tradition. Some, as those in reference to Os-sa-hin-ta and his associate chiefs of the Onondagas, relate to alleged facts of a comparatively recent date. Some, as those descriptive of the various wampums and of the bag in which they were kept, are apparently based upon the personal observation of the historian and do not relate to facts of general historical interest and repute.

It was conceded upon the trial that each of these historians was dead, and no question was raised as to their character and reliability as such.

I think that the extracts from Morgan's history, and those of the first class from Clark's, were com-
492 petent evidence.

Greenleaf on Evidence, Secs. 139 and 497 (16th ed.).

Bogardus *vs.* Trinity Church, 4 Sandf. Ch. R., 675.

McKinnon *vs.* Bliss, 21 N. Y., 206.

Crill *vs.* City of Rome, 47 How. Pr., 398.

Considering this and the other evidence before me, I am able to agree without much difficulty with part of plaintiffs' theory in regard to these wampums. While the subject necessarily rests upon hearsay and is pretty largely enveloped in tradition and legends, I think it is reasonable to find that

these wampums were used by the Indians as a 493
means of commemorating and preserving the memory of important events, such as the making of treaties, the coming of the white man, etc., and that while the League of the Iroquois was in active existence, the nations composing it employed this method of preserving the history of the events which they conceived to be of importance. It is reasonable also to assume that some one of their number was elevated to the position and duty of keeping these various wampums, and of expounding them and emphasizing their meaning and significance upon ceremonial occasions. All of the
historians and the students of Indian history who 494
have been sworn in this case seem to agree upon this custom or method of the Indian nations in question. The evidence also would seem to fairly permit the finding that the wampums in question here were part of those made and used and possessed by the League in question. As I have said, there is much of tradition and legend involved in going to this extent, but whatever there is of it seems to have been accepted as history by those who have studied the subject. This, however, is as far as I feel willing to go. I am not willing to
hold that on February 10, 1891, this old League, 495
composed first of the Five, and then of the Six, Nations had any active or actual existence, or that Thomas Webster, the Onondaga Indian from whom these wampums were obtained by the defendant's assignor, was at that date wampum-keeper for those nations, and that he held these wampums as such and that in violation of his duties sold them; or that there is any such identity and community of interest between these individual plaintiffs and members of Six Nations in having these wampums preserved and restored to some custodian, as per-

496 mits the maintenance of this action. The evidence seems altogether too shadowy to sustain these propositions.

"I am rather led to the conclusion that at and long before the time mentioned, the League, to which these wampums are said to have belonged, had been dissolved; that we had come to associate even its name with a period long gone by; that the nations which composed it had become separated and, to a large extent, scattered and dispersed and wards of the Government, and that these wampums are curiosities and relics of a time and con-
497 dition and confederation which has ceased to exist, and that Webster had possession of them as one who had gathered them as such relics. The evidence given with reference to the Onondaga Nation, and with reference to Webster, indicates to my mind that they had ceased to treat or regard them as the property of the Onondaga Nation, much less as that of the Iroquois League, and that there had been long acquiescence in Webster's possession of them as an individual owner.

"Independent of their original significance and use, they are relics of interest to at least the people of this State. They are even more than that.
498 They are to us bits and items in the history of the Indians and of a once powerful confederation. As such, the public have an interest in their preservation. But in my opinion that must rest upon the valuntary action of the defendant rather than be enforced by a judgment in this action.

"The conclusions reached upon the points considered render it unnecessary to consider the further defense interposed of the statute of limitations.

"Findings and judgment may be prepared dismissing plaintiff's complaint with costs, and be settled upon five days' notice."

At a Term of the Appellate Division of the Supreme Court, held in and for the Fourth Judicial Department, at the City of Rochester, on the 24th day of July, 1900. 499

Present—Hon. WILLIAM H. ADAMS, Presiding Justice.
Hon. PETER B. MCLENNAN, Hon. ALFRED SPRING, Hon. PARDON C. WILLIAMS, Hon. FRANK C. LAUGHLIN, } Associate Justices.

THE ONONDAGA NATION, *et al.*, Appellants,

vs.

JOHN BOYD THACHER, Respondent.

Order of Affirmance on Appeal from Judgment. 500

The above-named plaintiffs and each of them separately, the appellants in this action, having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Onondaga on the 26th day of December, 1899, and the said appeal having been argued by Mr. Edward Winslow Paige, of counsel for the appellant, and by Mr. John Delehanty, of counsel for the respondent, and due deliberation having been had thereon, 501

It is hereby ordered and adjudged that the judgment so appealed from be and the same is hereby affirmed; and the respondent recover of the appellant the costs of this appeal.

Opinion by Williams, *J.* All concur, except McLennan, *J.*, not voting.

NEWELL C. FULTON, Clerk.

GEORGE J. YAECKEL, Clerk.

502 SUPREME COURT.

ONONDAGA COUNTY.

THE ONONDAGA NATION; University of the State of New York; Say-Ha-Que, an Onondaga Indian; Hos-Hay-Qua, an Onondaga Indian; Sho-Heh-Do-Nah, an Onondaga Indian; Ha-On-Wengo-Wenle, an Onondaga Indian; Jarvis Farmer, an
503 Onondaga Indian; Ho-Do-Oh-Go-Ah, a Seneca Indian; and Ha-Ja-Ah-Gwysh, a Cayuga Indian,

Plaintiffs,

against

JOHN BOYD THACHER,

Defendant.

Judgment of Affirmance.

504 The appeal from the judgment entered in the above-entitled action on the 26th day of December, 1899, in favor of the defendant and against the plaintiffs, dismissing the complaint of said plaintiffs upon the merits and adjudging that the above-named defendant recover of the above-named plaintiffs the sum of One hundred and sixty-nine Dollars and twenty-eight cents ($169.28), costs and disbursements, as adjusted, and said appeal having come on to be heard and having been heard and decided, and the Appellate Division having by an order duly made and entered herein and filed in the office of the Clerk of said Appellate Division on the day of July, 1900, ordered that the

said judgment so appealed from be in all things affirmed, with the costs of said appeal to said defendant-respondent, 505

Now, on reading and filing a certified copy of said order and the original case upon which said appeal was heard, and upon motion of John A. Delehanty, attorney for the defendant herein, it is

Adjudged, that said judgment entered in the above-entitled action in the office of the Clerk of the County of Onondaga on the 26th day of December, 1899, be and the same hereby is in all things affirmed.

And it is further adjudged that the above-named defendant recover from the above-named plaintiffs the sum of $157.45, his costs and disbursements on said appeal and have execution therefor. 506

GEORGE J. YAECKEL,
Clerk.

Entered in the office of the Clerk of Onondaga County, 7 August, 1900.

SUPREME COURT, APPELLATE DIVISION,

FOURTH JUDICIAL DEPARTMENT. 507

Clerk's Office, Rochester, N. Y.

I, NEWELL C. FULTON, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that the annexed order is a true copy of the original now on file in this office, and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of Rochester, this 13th day of September, 1900.

NEWELL C. FULTON,
[SEAL.] Clerk.

508 At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Fourth Judicial Department, at the City of Rochester, on the 24th day of July, 1900.

Present—Hon. WILLIAM H. ADAMS,
Presiding Justice.
" " PETER B. MCLENNAN
" " ALFRED SPRING,
" " PARDON C. WILLIAMS,
" " FRANK C. LAUGHLIN,
509 Associate Justices.

THE ONONDAGA NATION, TE-HES-HA, an Onondaga Indian, on his own behalf and also on behalf of all the Ho-do-no-sau-nee, and others,
Plaintiffs,

against

JOHN BOYD THACHER,
510 Defendant.

On reading and filing a transcript of the Minutes of the trial herein made at the Trial Term by the Official Stenographer of the Court, whereby it appears that a motion was duly made by and on behalf of the above-named plaintiffs and duly granted by the Court making certain parties other than those above named and now appearing in the record additional parties plaintiff herein and amending the Summons and Complaint accordingly without further service of the same, and

otherwise amending said Complaint by the insertion of a certain allegation more particular referred to in the order of the Court thereupon duly entered; 511

And it further appearing by said Minutes that the application of the plaintiffs so made as aforesaid was granted and the authority to so amend said Summons and Complaint was given upon the express condition that the defendant be allowed to amend his answer without further service of the same by inserting therein a denial of such additional allegations of the Complaint as were authorized by such amendment, and, also, by a denial of such allegations of the amended Complaint relating to the said additional plaintiffs appearing in the original Complaint as were denied in the original answer and by making such affirmative allegations concerning such additional plaintiffs as were made in the original answer concerning the original plaintiffs above named, and also by pleading the six years' Statute of Limitations so far as all the plaintiffs are concerned; 512

Now, on motion of John A. Delehanty, attorney for the defendant, it is

Ordered, that the order heretofore granted herein relating to such application be and the same hereby is corrected and amended *nunc pro tunc* by directing that the answer of the defendant be deemed amended without further service of the same by inserting therein allegations relating to the Complaint as amended, containing general and specific denials of the same description as are contained in the original answer relating to the corresponding allegations of the original Complaint, by adding an allegation that the plaintiffs now named as parties to this action, including the plaintiffs brought in by said order of the Court, have no real interest in this action or the subject-matter thereof; that no authority was ever given by those plaintiffs 513

514 to commence the action, and that neither of said plaintiffs had or has the legal capacity to sue, or the legal capacity to bring and maintain this action; and by adding to said answer the allegation, viz., that no part of the alleged cause of action accrued within six years prior to the commencement thereof.

And be it further ordered, that said answer be deemed amended in all the above respects without further service of the same *nunc pro tunc* with the same force and effect as if said allegations above mentioned were actually inserted therein, and that
515 the record be changed so as to conform with said several amendments.

McLennan, *J.*, not voting.

[L. S.] NEWELL C. FULLER,
Clerk.

Endorsed: "Filed Sept. 13, 1900."

516

APPELLATE DIVISION OF THE SUPREME COURT. 107

FOURTH JUDICIAL DEPARTMENT.

THE ONONDAGA NATION; University of the State of New York; Say-Ha-Que, an Onondaga Indian; Hoo-Hay-Que, an Onondaga Indian; Sho-Heh-Do-Nah, an Onondaga Indian; Ha-On-Wongo-Wenie, an Onondaga Indian; Jarvis Farmer, an Onondaga Indian; Ho-De-Oh-Go-Ah, a Seneca Indian; and Ha-Je-Ah-Gwyah, a Cayuga Indian, Plaintiffs-Appellants, 108

against

JOHN BOYD THACHER, Defendant-Respondent.

SIR:

You will please take notice that each of the above-named plaintiffs-appellants hereby separately appeals to the Court of Appeals of the State of New York from the judgment of the Appellate Division of the Supreme Court, Fourth Judicial Department herein, entered in the office of the Clerk of Onondaga County, on the 7th day of August, 1900, and from each and every part thereof. 109

Dated N. Y., August 10th, 1900.

Yours, &c.,
EDWARD WELLOW PAGE,
Atty. for Appellants.

To JOHN A. DELEHANTY, Esq.,
Attorney for Respondent, and
The Clerk of the Appellate Division of the Supreme Court, Fourth Judicial Department.
Clerk of Onondaga County.

520 It is hereby stipulated and agreed that the foregoing papers are true and correct copies of the Notice of Appeal, the judgment of affirmance of the Appellate Division, Fourth Department, and all papers on which the Court below acted in making said judgment.

Certification hereof in pursuance to the Code of Civil Procedure is hereby expressly waived.

Dated August tenth, 1900.

JOHN A. DELEHANTY,
Attorney for Respondent.

521

EDWARD WINSLOW PAIGE,
Attorney for Appellants.

522

Opinion Appellate Division.

523

WILLIAMS, *J.*: The action was brought to recover possession of four wampum belts, and for equitable relief in reference thereto. The defendant claimed he acquired title to the belts from Rev. Dr. Oliver Crane March 24, 1893; that Dr. Crane acquired title thereto from Henry B. Carrington, of the United States army, in the month of July, 1892; and that Carrington acquired title thereto from Thomas Webster, a member of the Onondaga tribe of Indians, living on the Onondaga reservation, in the state of New York, on the 10th of February, 1891. The claim made by the plaintiffs was that, 524 at the time Webster assumed to sell the belts to Carrington, they were not the property of Webster, and he had no power to sell or transfer title thereto, but that they belonged to a confederacy of Iroquois Indians. The trial court dismissed the complaint, holding that plaintiffs had no right to maintain such an action, and that the defendant had good title to the belts.

As to the right of the plaintiffs to maintain such an action, we must hold, since the decision by the court of appeals of Johnson *v.* Railroad Co., 162 N. Y. 462, 56 N. E. 992, that the Indian plaintiffs 525 cannot maintain the action. That was an action to recover real property (ejectment). This is one to recover personal property,—in form, in equity. But the principle is the same in both actions. It is said by appellants that this question was not properly raised as to the Indians brought in by the order of December 20, 1898. It seems to us that the real intention was to make the same answer to the additional Indian plaintiffs as was made to the original ones, and the action was apparently tried upon this theory. The bringing in of these parties was a matter of favor to the plaintiffs, and they

526 should not be permitted to take advantage of any technical objection like this one. If necessary to correct the answer or order, it should be done by this court, under section 723 of the Code of Civil Procedure. More than this, the plaintiffs have given evidence that all title which the Indians had to these wampum belts has been transferred to the University of the State of New York. The only plaintiff which can by any possibility maintain this action, therefore, is the University of the State of New York. It undoubtedly has power to bring actions generally. It is a corporation having capacity to sue and be sued. It has a state museum
527 under chapter 378 of the Laws of 1892, and an Indian section thereof, under chapter 586 of the Laws of 1896; and it has power under the statute to acquire title to such articles as these wampum belts, and to recover possession thereof by actions in the courts like the present one. It seems to us ridiculous, however, to say that it could be constituted a wampum-keeper of any Indian tribe or confederacy. It was not an Indian, and had no statutory right or power to be constituted an Indian or wampum-keeper, of the kind indicated by the evidence given in the case. This claim is not
528 worthy of any serious consideration. The only question involved in the action is one of title to the wampum belts,—which has superior title, the University of the State of New York or the defendant. The source of the defendant's title has already been referred to. His chain of title commenced with Thomas Webster, an Onondaga Indian, February 10, 1891. The chain from that point is complete to the defendant. The University of the State of New York claims title under a bill of sale made pursuant to a resolution adopted by a meeting of the so-called Onondaga Nation of Indians March 26, 1898. Two resolutions were passed at the same

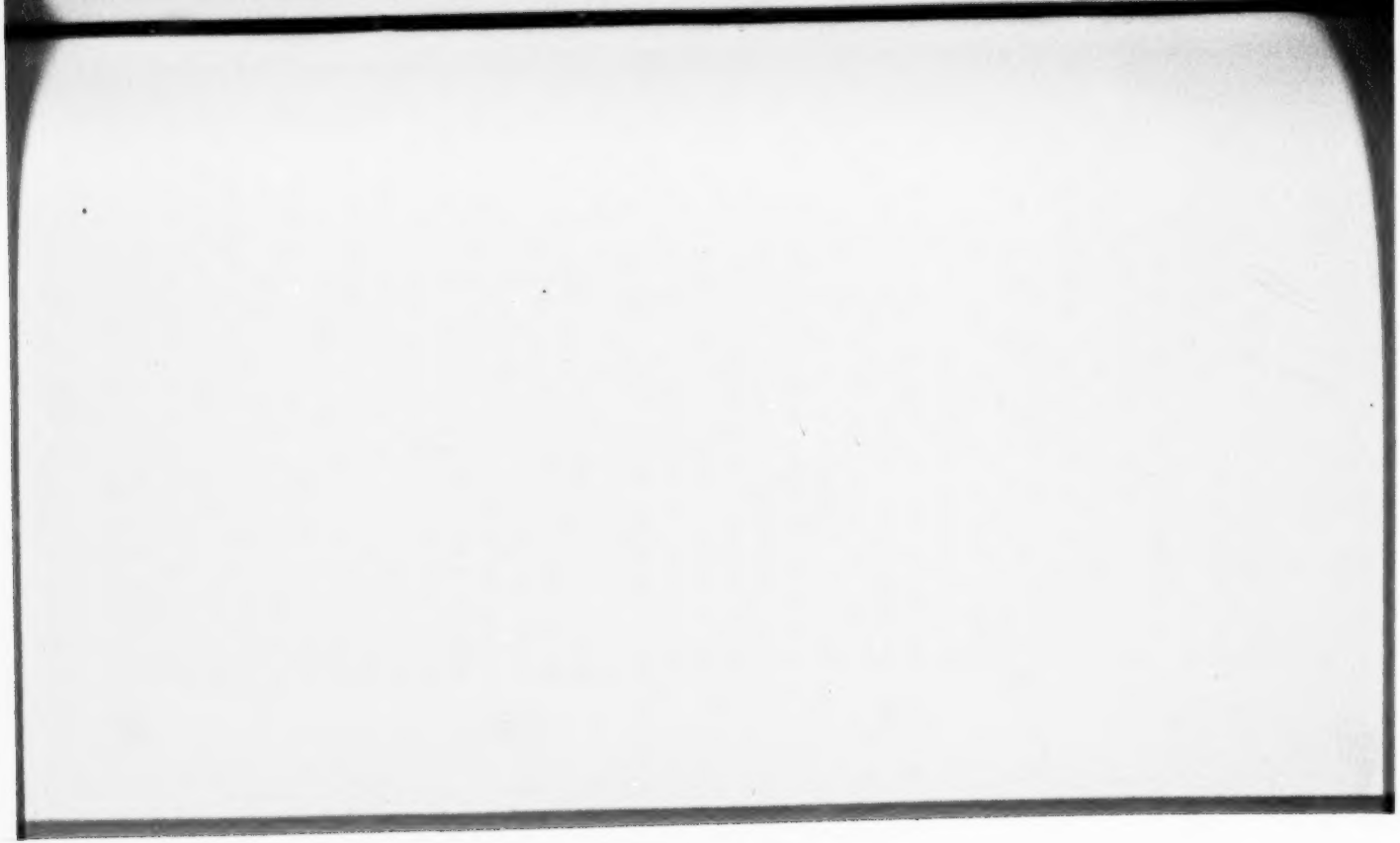
meeting—one, electing the University of the State 529
of New York wampum keeper; and the other, following the first, that the Onondaga Nation sell to the University of the State of New York all wampums, for $500, and that the sachems and chiefs present all execute a bill of sale for the nation. Then the transfer was, in form, that the Onondaga Nation sell, assign, transfer, and set over to the University of the State of New York all wampum, in belts, strings, or otherwise, of which it ever had or was entitled to possession, and all its rights, title and interest to any and all wampums anywhere, in consideration of $500; and it made the 530
University of the State of New York attorney of the Onondaga Nation and its sachems and chiefs present, at its (the attorney's) own cost and expense to recover the possession of the said wampum by suit or otherwise. The question arises, as to this transfer, whether the parties assuming to make the same had any title to the wampum belts in question, which they transferred to the University of the State of New York. They had no possession of the belts, at the time of making the transfer, which could be said to be *prima facie* evidence of title, as in the case of the transfer by Webster. He had possession of the belts in 1891, and de- 531
livered them, with a transfer of such title as he had, more than seven years before the transfer to the University of the State of New York. The trial court, upon evidence apparently satisfactory to itself, found the early existence of the Indian confederacy; that it had wampum belts; that the care and custody thereof were intrusted to the Onondaga Nation, which appointed one of its members wampum keeper; and that the belts in question were at one time a portion of the belts belonging to the confederacy. But it found that this confederacy many years prior to February 10,

532 1891, the date of the transfer by Webster, was dissolved, and thereafter had no existence, the use of the belts had become obselete, and they nothing more than curiosities and relics of a time, condition, and confederation which had ceased to exist, and that the office of wampum keeper had been abrogated; that Webster was never a wampum keeper, but in some way became possessed of and the owner of the belts in question long before he made the transfer thereof in 1891. While we should not be prepared to give our assent to all these findings, upon the evidence, as original propo-
533 sitions, yet we need not go into the details of the conclusions arrived at, inasmuch as the ownership of the belts by Webster is found upon adequate evidence, and that defeats all claim of title thereto by the University of the State of New York under the pretended transfer to it in 1898. There is proof of Webster's ownership of the belts, in the fact of his possession thereof, independent of any proof of his having been a wampum keeper, for years prior to his transfer thereof in 1891. There is no satisfactory proof of any ownership by the parties making the transfer of 1898, or authority to act for the owners of the belts. The defendant has
534 the possession of the belts under the Webster transfer in 1891, and the University of the State of New York must show a better title than defendant's before the court can award the belts to it. While the proof of any authority to represent the confederacy of Indians or the Onondaga Nation as the alleged owners of the belts is unsatisfactory how can it be said that they had authority to sell and transfer the belts for a money consideration of $500 to the University of the State of New York? If there were any good purpose to be served, by allowing the Indians themselves to regain possession of the belts, we might struggle

to reach such a result; but where the controversy 535
is between other parties, who claim to have purchased the belts and paid their money therefor, then all question of sentiment is gone, and it is a mere question of title, to be determined upon the evidence, and we are unable to see any reason why we should reverse the trial court in its finding that Webster had good title to the belts when he made his transfer in 1891, or why we should not at least conclude ourselves that the University of the State of New York has failed satisfactorily to establish any better title under the transfer of 1898 than the defendant holds under his chain of title, 536
which began in the Webster transfer of 1891. After an extended examination of the record, we conclude that the judgment appealed from should be affirmed, with costs.

Judgment affirmed, with costs. All concur, except McLennan, *J.*, not voting.

537



In the Court of Appeals of the State of New York, Fourth Department.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant,

Motion.

As-que-sent-wah (Edward Winslow Paige), of counsel.

You will take notice that on the eleventh day of November one thousand nine hundred and one I will present to the court of appeals at the opening of the court, papers of which the annexed are copies, and will pray for the direction of the court.

AS-QUE-SENT-WAH
(EDWARD WINSLOW PAIGE).

SCHENECTADY, *ss*:

Edward Winslow Paige, being duly sworn, says:—
On the twenty-third of the last March, I received in New York the following letter with the following enclosure:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative, "Home education,	College, State library,	High school, State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"REGENTS' OFFICE,
"ALBANY, N. Y., 22 *Mr.*, 1901.

"Edward Winslow Paige, New York.

"DEAR MR. PAIGE: The inclosed is a copy of the action taken by "the regents at their meeting held March 14, on the motion of the "secretary of state.

"Very truly yours,

J. R. PARSONS, JR."

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor; James Russell Parsons, Jr., secretary.

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"REGENTS' OFFICE,
"ALBANY, N. Y., 21 *March*, 1901.

"At a legal meeting of the regents of the University of the State of "New York, held at their office in the capitol in Albany, March 14, "1901, the following action was taken:

"*Extracts from Official Minutes.*

"*Voted*, That in the case of The Onondaga Nation *vs.* John Boyd "Thacher, the attorney for the plaintiff be requested to state to the "court of appeals that he was under a misapprehension in supposing "that he had received authority from the regents to make the Uni-"versity of the State of New York a party to the suit.

"A true record.

"Attest: J. R. PARSONS, JR., *Secretary.*"

Other facts in regard to this matter, some of which I then knew and the others of which I have since ascertained, are as follows:

At its March meeting of 1898, which was upon the twenty-second of that March, the following was, as I am informed and believe, done by the regents, as appears by their minutes:

"*State Museum.*

"Wampum.—The secretary reported the unanimous election by "the Indian council of chiefs, of the university as permanent wam-"pum-keeper for all wampums of the Five nations and Six nations.

"*Voted*, That the matter be referred to the museum committee with "power to act in securing the wampums.

"*Action of Onondaga Chiefs*

"At a council of the Onondaga nation held at the house of Daniel "La Forte in Onondaga on the 26th day of February 1898 held "pursuant to call and notice given to all the chiefs.

"*Present*

"Te-hes-ha	Daniel La Forte, *president*
"Sa-ha-que	Baptist Thomas, *treasurer*
"Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*

"Ha-say-gwa-e-say	Jacob Skenandoah	*Sachems and chiefs*
"So-day-qua-scum	Asa Wheelbarrow	
"Sa-da-qua-seh	Jacob Bigbear	
"Ha-e-ho	Levi Webster	
"O-gayis-qua	John Farmer	
"Ho-yo-ne-a-ne	William Webster	
"Ga-na-ha-guh-yat	Wallace Carpenter	
"Ha-wen-jo-wah-e	Enoch Skenandoah	

"The following resolutions were unanimously adopted:

"*Resolved*, That the University of the State of New York be and "it hereby is elected wampum-keeper of the Onondaga nation, with "full power and it shall be its duty to get possession of and safely "keep forever all wampums of the Onondaga nation and the Five "nations and Six nations and each of them.

"Whereupon the University of the State of New York was unan-"imously elected to the office of wampum-keeper."

It appears by the constitution of the Onondaga nation that eight chiefs make a quorum (Appeal Book, fol. 449).

On the fourth of March 1898 I received from Mr. Richmond the honorary curator of the Indian museum, a letter, of which the following is a copy:

"MARCH 3, '98.

"DEAR MR. PAIGE: I have your favor of the 2nd inst. I will "see Mr. Dewey as soon as I can, after receiving copies of the papers, "and will see if I can get my pay—have them pass a resolution as "you requested and get Mr. Dewey's authority for us to proceed "against the Pierce woman for the wampum, and any others we "may find. I will also have him get a certified copy by the clerk "of the senate, of the book you want."

This letter was of course sent before the above action of the regents.

On the twenty-fourth of May 1898 I received from Mr. Richmond a letter telling me of the receipt by him of the two large wampums which are depicted uppermost on the picture, facing page 104 of the Appeal Book. I have since been informed that this was accomplished with the action of the chiefs under the above resolution. The university already had in its possession the remaining five wampums—besides those in Mr. Thacher's possession—which General Clark saw in 1879 (Appeal Book, fols. 163–169).

In June a regents' convocation was held in Albany at which were present Indians of all the Six nations, and by the direction of Onondaga chiefs I presented publicly to the regents the above resolution of the chiefs—the original paper—and the wampums, and there was a public acceptance by the chancellor in the following words:

"CHANCELLOR UPSON: As chancellor of the university permit me "to accept this gift."

(Regents' Bulletin 45, of December, 1898, p. 430.)

On the twenty-seventh March, 1899, the legislature passed an act which contained the following:

"Chap. 153, Laws 1899.

"An act to collect and preserve from loss or injury any and all "wampums which the Onondaga nation of Indians, or its wampum-"keeper, or any of the Ho-do-no-sau-nee, otherwise known as the "Five nations, or the Six nations, or the Iroquois, is entitled to "possess.

"SECTION 1. The University of the State of New York, which was "duly elected to the office of wampum-keeper by the Onondaga na-"tion, on February twenty-sixth, eighteen hundred and ninety-eight, "and which by unanimous action of its regents on March twenty-"second, eighteen hundred and ninety-eight, accepted such election "as authorized to do by law, and which accepted the custody of the "wampums as formally transferred to the chancellor as part of the "exercises and with the unanimous approval, both of the election "and transfer, by the council of the Five nations, held in the senate "chamber of the capitol at Albany on June twenty-second, eighteen "hundred and ninety-eight, by duly chosen representatives of all the "original nations of the Ho-de-no-sau-nee, shall hereafter be recog-"nized in all courts and places, as having every power which has "ever, at any time, been exercised by any wampum-keeper of the "Onondaga nation, or of any of the Ho-de-no-sau-nee, otherwise "known as the Five nations, or the Six nations, or the Iroquois, and "shall keep such wampums in a fire-proof building, as public "records, forever."

It is true that this act also contained the following:

"§ 2. The provisions of this act shall not apply to the subject-"matter of any litigation now pend- in any court of this State."

and that at the time of its passage this action was pending.

In December 1898, at the opening of the trial of the case, I brought in the university (Appeal Book, fol. 81); Mr. Richmond being present and afterwards a witness on the trial (Appeal Book, fol. 442). I say nothing of any conversations I have had with Mr. Richmond, since he died the following summer.

The facts in regard to this trial were widely published in the newspapers at the time, including the fact that the university was a party—the newspapers of New York, Albany and Syracuse.

In November of 1900, Mr. Justice Hiscock decided the case and again the facts were widely published in the newspapers, and, I am informed, telegraphed through the Associated Press. I immediately took an appeal.

On the fourteenth of January, 1900, I received from Mr. Parsons, the secretary of the regents, the following letter, to which I sent the following reply:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE, ALBANY, N. Y., *Ja.*, '00.

"Hon. E. Winslow Paige, Schenectady, N. Y.

"DEAR MR. PAIGE: Under the adverse decision in regard to the "suit over the wampum belts in which you introduced the name of "the university as a party to the suit, is there anything that should "be done by the regents? As I understand it, you have taken the "whole charge of this matter and no costs were authorized by us, "and we have simply to leave it entirely in your hands. Is this "correct?

"Yours very truly, J. R. PARSONS, JR.,
"*Acting Secretary.*

"If any action by the regents is deemed necessary, I beg that you "will defer the matter till after February 15 when the regents are "to hold their next meeting."

"DEAR SIR: Nothing whatever is to be done by the regents in "regard to the wampum case. Your understanding is entirely cor-"rect. I argue the case next week and when I get to the court of "appeals I mean to win it.

"Very truly, EDWARD WINSLOW PAIGE.

"J. R. Parsons, Jr.
"Wednesday."

In March the appeal was argued before the appellate division and again the facts were widely published in the newspapers, including all the principal New York papers and the Albany and Rochester papers.

In the July of 1900 the appeal was decided by the appellate division, and again the facts were widely published in the papers.

On the tenth of August 1900 I received the following letter from Doctor Merrill, then and still director.

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor; James Russell Parsons, Jr., secretary.

"Established 1843.

"New York State museum.

"Frederick J. H. Merrill, director and State geologist; John M. Clarke, State paleontologist; Charles H. Peck, State botanist; Ephraim Porter Felt, State entomologist.

"Dictated in reply to yours of —.

"DIRECTOR'S OFFICE, GEOLOGICAL HALL,
"ALBANY, N. Y., 9 *Ag*,, 1900.

'Hon. E. W. Paige, 44 Cedar St., New York.

"DEAR SIR: Please let me know what is the present status of the "Thacher wampum case and whether you expect to carry the "litigation farther.

"Very truly yours, F. J. H. MERRILL, *Director.*"

To this I replied in substance that I meant to carry the case as far as it would go.

In September I received from Mr. Parsons a latter stating that Mr. Delehanty had called upon him to pay up the costs. I immediately had the necessary undertaking given and sent a copy to Mr. Parsons, who acknowledged its receipt.

On the fourth of the January of this year I received from Mr. Parsons a letter of which the following is a copy enclosing the copy of a letter to Mr. Thacher, which directly follows:

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE,
"ALBANY, N. Y., 2 *Ja.*, 1901.

"29 D.

"Edward Winslow Paige, New York.

"DEAR MR. PAIGE: At the last meeting of the regents the following resolution was adopted.

"*Voted*, That the matter of the wampum case be referred to the secretary of state, Regent T. Guilford Smith, Secretary Parsons and Dr. Merrill for information and for such farther action as may be necessary.

"This morning I am sending a copy of your letter to the members of the committee with a request for advice relative thereto. Inclosed herewith you will find copy of a letter which I wrote Mr. Thacher on the advice of a former committee of the regents to which the matter had been referred.

"I will communicate with you again as soon as I hear from the members of the committee.

"Very truly yours, J. B. PARSONS, JR."

"Incorporated 1 May, 1784.

"University of the State of New York.

"*Departments.*

"Administrative,	College,	High school,
"Home education,	State library,	State museum.

"Anson Judd Upson, chancellor; William Croswell Doane, vice-chancellor.

James Russell Parsons, Jr., secretary of university, director college and high-school departments; Henry I. Knickerbocker, head clerk.

"Dictated in reply to yours of V.

"(Copy.)

"REGENTS' OFFICE, ALBANY, N. Y., 28 *S.*, 1900.

"Hon. John Boyd Thacher, Albany, N. Y.

"DEAR SIR: It does not appear from the minutes of the regents that they authorized the use of the name of the university as a party in the wampum suit, or that they in any way encouraged its prosecution. Mr. Dewey states that he never authorized or believed in this suit, but that he could not without serious prejudice against the friends of Mr. Edward Winslow Paige interfere or file a protest. Mr. Dewey adds that Mr. Paige insisted that the name of the university as a mere matter of form ought to be used, and that he (Mr. Paige) would take care of expenses and legal services. On the other hand Mr. Paige, whose attention was called to this matter by us August 29, 1900, writes that he never told anybody that the appearance of the university in the suit was a mere matter

"of form, and that he never had any conversation with Mr. Dewey "on the subject, though he says there are some letters. Mr. Paige "in a letter now in my possession states that he asked Mr. Rich- "mond to get authority to bring in the university as a party and "understood from him that he had done so. The Mr. Richmond "referred to by Mr. Paige was known as the honorary curator of the "Indian museum, but was not a salaried officer of the State. I "cannot find any evidence that he ever procured the authority "which Mr. Paige says he was to get. In fact, as far as I am able "to ascer- from the regents' minutes and from the correspondence, "neither the board of regents nor any member thereof ever charged "you with being in wrongful possession of the wampum belts, nor "*nor* did the board or any member thereof authorize this suit or "encourage its prosecution.

"Very truly yours,

"JAMES RUSSELL PARSONS, JR., *Secretary.*"

After this came the letter of the twenty-third of March, which has been given.

On the fifth of July of this year, I sent to the University of the State of New York a paper of which the following is a copy:

"To the University of the State of New York:

"On the twenty-second of March, one thousand eight hundred and "ninety-eight—the Onondaga nation—by the unanimous vote of "twelve of its chiefs in regular council assembled—eight being a "quorum—adopted a resolution in the following words:

"'*Resolved*, That the University of the State of New York be and "'it hereby is elected wampum-keeper of the Onondaga nation with "'full power and it shall be its duty to get possession of and safely "'keep forever all wampums of the Onondaga nation and the Five "'nations and Six nations and each of them.'

"And thereupon the University of the State of New York was by "the said council unanimously elected to the office of wampum- "keeper.

"On the twenty-second of March one thousand eight hundred and "ninety-eight the University of the State of New York by the unan- "imous vote of its regents accepted the above appointment and "office.

"About the eighth of May one thousand eight hundred and ninety- "eight by the action of the chiefs, the two large wampums known "as the 'constitution' and the 'wing or dust mat' were delivered "to the University of the State of New York—which now has in its "possession all of the official wampum records which were seen by "General Clark in the year one thousand eight hundred and seventy- "nine with the exception of the four wampum records now in the "possession of Mr. John Boyd Thacher.

"On the twenty-second of June, one thousand eight hundred and "ninety-eight, at a council held in the capitol in Albany at which "were present representatives of all the original Five nations, duly "accredited, the election of the University of the State of New York

"was ratified and the duty, the wampums and the office were for-
"mally and publicly accepted by the chancellor.

"Demand is therefore now hereby made upon the University of
"the State of New York 'to get possession of and safely keep for-
"'ever' the four wampums now in the possession of John Boyd
"Thacher either by the prosecution of the pending appeal in the
"suit now against him, or by the bringing of a new suit, and both.

"Very respectfully, AS-QUE-SENT-WAH.

"Fifth of July, one thousand nine hundred and one."

On the ninth of July I had a letter stating that this paper had been received.

EDWARD WINSLOW PAIGE.

Sworn before me this fourth day of November 1901
ALONZO P. STRONG,
Schenectady County Judge.

(Endorsed:) Filed Jan'y 16, 1902.

Opinion of the Court.

THE ONONDAGA NATION, ETC., ET AL., Appellants,
v.
JOHN BOYD THACHER, Respondent.

(Decided December 20, 1901.)

Edward Winslow Paige for appellants.
John A. Delehanty for respondent.

Per Curiam:

We think the judgment appealed from should be affirmed, upon the ground that neither the Onondaga nation, nor the individual Indians named as plaintiffs, had legal capacity to bring and maintain the action. (*Strong v. Waterman*, 11 Paige, 607; *Seneca Nation v. Christie*, 126 N. Y., 122; *Johnson v. Long Island R. R. Co.*, 162 *ib.* 462).

As to The University of the State of New York, one of the plaintiffs, the finding of fact by the trial judge "that the University of the State of New York never purchased any or either of the wampum belts mentioned and described in the complaint, and that said University of the State of New York never was selected or 'raised up' to the position or office of 'wampum-keeper,' and no official proceedings were ever begun on the part of any of the tribes of Indians which formerly composed the Iroquois confederacy for the purpose of conferring any such position or office upon said Univerversity of the State of New York, assuming that there is or was, at the time of said alleged proceedings, any such official position," is supported by evidence, and the judgment having been affirmed at the appellate division, it is, therefore, conclusive upon us.

The judgment should be affirmed, with costs.

Gray, O'Brien, Haight, Cullen and Werner, *JJ.*, concur; Parker, *Ch. J.*, absent; Landon, *J.*, not voting.

Judgment affirmed.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the twentieth day of December, in the year of our Lord one thousand nine hundred and one, before the judges of said court.

Witness the Honorable Alton B. Parker, chief judge, presiding.

WILLIAM H. SHANKLAND, *Clerk.*

Remittitur, Dec. 21, 1901.

THE ONONDAGA NATION and Others, Appellants,
against
JOHN BOYD THACHER, Respondent.

Be it remembered that on the 18th day of September in the year of our Lord one thousand nine hundred The Onondaga Nation, and others, the appellants in this action, came here into the court of appeals by Edward Winslow Paige their attorney and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the fourth judicial department, and John Boyd Thacher, the respondent in said action, afterwards appeared in said court of appeals by John A. Delehanty, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals having heard the cause argued by Mr. Edward Winslow Paige, of counsel for the appellants, and by Mr. John A. Delehanty, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the appellate division of the supreme court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered that the record aforesaid and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be and the same hereby is affirmed, with costs.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *December* 21st, 1901.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein, attached thereto.

[L. S.] W. H. SHANKLAND, *Clerk.*

At a special term of the supreme court of the State of New York, held in and for the county of Onondaga, at the court-house in the city of Syracuse, on the 27th day of December, 1901.

Present: Hon. Wm. S. Andrews, justice.

THE ONONDAGA NATION, TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-owysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant.

This cause having been brought on upon the remittitur sent down from the court of appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the plaintiffs to said court of appeals from the judgment of the appellate division of the supreme court in the fourth judicial department, entered in the office of the clerk of Onondaga county on the 7th day of August, 1900, that said court of appeals has heard the cause argued by counsel for the appellants and respondent, respectively, and, after due deliberation had thereon, has ordered and adjudged that the judgment of the appellate division of the supreme court, appealed from herein, be, and the same hereby is, affirmed with costs and that the record and proceedings have been directed by said court of appeals to be remitted to this court and this court directed to enforce the said judgment of the court of appeals according to law,

Now, therefore, on motion of John A. Delehanty, of counsel for the defendant, it is

Ordered and adjudged, that the judgment of the said court of appeals be, and the same hereby is, made the judgment of this court and that the defendant have execution against the plaintiffs for the costs when adjusted by the clerk and inserted in the judgment, as well as for the amount adjudged to be recovered in and by the judgment of this court in this case entered in the office of the clerk of the county of Onondaga on the 26th day of December, 1899, and the judgment of affirmance thereof entered in the office of the clerk of the county of Onondaga on the 24th day of July, 1900, and that this order and judgment be annexed to the judgment-roll.

Enter.

W. S. A., *J. S. C.*

Supreme Court, Onondaga County.

THE ONONDAGA NATION, TE-HES-HA, SAY-haque, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ho-ja-ah-Gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs,

against

JOHN BOYD THACHER, Defendant.

Judgment, December 27, 1901.

A judgment in this action in favor of the defendant against the plaintiffs having been rendered in this court on the 26th day of December, 1899, upon the findings and decision of the court for the sum of $169.28, costs and disbursements, and the plaintiffs having appealed from said judgment to the appellate division of the supreme court in the fourth judicial department and the said judgment having been affirmed in all things by said appellate division of the supreme court and judgment of affirmance having been rendered thereon and entered in the office of the clerk of Onondaga county on the 24th day of July, 1900, directing that the defendant recover against and from the plaintiffs the sum of $157.45 for his costs and disbursements on said appeal; and the plaintiffs having appealed therefrom to the court of appeals and the said court of appeals having sent hither its remittitur filed herein the — day of December, 1901, by which it appears that the said court of appeals has affirmed the said judgment in all things with costs and has given judgment accordingly and has remitted the judgment of the said court of appeals to this court to be enforced according to law; and this court having, by an order entered herein the 27th day of December, 1901, ordered that said judgment be made the judgment of this court with costs, the same having been adjusted by the clerk at the sum of one hundred and sixty-nine dollars and sixty-eight cents ($169.68), as per bill of costs filed with the clerk of Onondaga county and of this court on this day:

Now, on motion of John A. Delehanty, attorney for the defendant, it is

Adjudged, that the judgment of the said court of appeals be, and the same hereby is, made the judgment of this court, and that the defendant recover of and against the plaintiffs the sum of one hundred and sixty-nine dollars and sixty-eight cents ($169.68), as and for his costs and disbursements of said appeal to the court of appeals and have execution therefor.

JAS. E. HUBBELL, *Clerk.*

(Endorsed:) Filed Dec. 27, 1901, 11.45 a. m.

[Endorsed:] Supreme Court. The Onondaga Nation and others, plaintiffs, against John Boyd Thacher, defendant. Copy. Order and judgment on remittitur. John A. Delehanty, attorney for defendant. Office and Post-office address, the Commercial Bank building, 38 & 40 State St., Albany, N. Y.

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington within thirty days from this date to answer the complaint of the Onondaga Nation and others pursuant to a writ or error this day granted and allowed by the Honorable Rufus W. Peckham and directed to the justices of the supreme court of the State of New York

Sixth of January 1902

R. W. PECKHAM.

To John Boyd Thacher.

Due service of the within citation is admitted this eighth of January 1902

(S'd) JOHN A. DELEHANTY,
Attorney for Defendant, Albany, N. Y.

(Endorsed:) Filed Jan'y 16, 1902.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable justices of the supreme court of the State of New York for the fourth judicial department, Greeting:

Because in the record and proceedings as also in the rendition of judgment of a suit which is in the said supreme court before you or some of you, said judgment having been affirmed by the court of appeals of the State of New York which is the highest court of law and equity of that State, and the record having been remitted from said court of appeals to your court—which suit was between The Onondaga Nation; Te-hes-ha, Say-ha-que, Hos-hay-qua, Sho-heh-do-nah, Ha-on-wen-go-wenle and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ah-gwysh, a Cayuga Indian; and The University of the State of New York, plaintiffs,—and John Boyd Thacher defendants; wherein was drawn in question the *the* validity of a statute or treaty of or an authority exercised under the United States and the decision was against their validity, or the validity of a statute or an authority exercised under said — on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the right, title, privilege or exemption claimed under such Constitution, treaty, statute or commission, a manifest error hath happened to the great damage of the said plaintiffs as by their complaint appears, we being willing that error, if any there hath been, should be corrected do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the Supreme Court may cause further to be done what should be done—

Witness the Honorable Melville W. Fuller, Chief Justice of the United States at the city of Utica, in the northern district of New York, the eighth day of January, one thousand nine hundred and two

Seal of the U. S. Circuit Court, Northern District N. Y.

W. S. DOOLITTLE,
Clerk U. S. Circuit Court, Northern District of New York.

The foregoing writ of error is allowed and is to operate as a supersedeas on the filing of a bond for five hundred dollars.
Jan'y 6, 1902.

R. W. PECKHAM.

[Endorsed:] No. —. United States Supreme Court. Writ of error

STATE OF NEW YORK, *ss:*

And now here the justices of the supreme court of New York for the fourth judicial department make return of this writ by annexing hereto and sending herewith under the seal of the said court for Onondaga county a true and attested copy of the record and proceedings in the suit within mentioned with all things concerning the same to the Supreme Court of the United States as within commanded.

Court of Appeals of the State of New York.

THE ONONDAGA NATION, UNIVERSITY OF THE STATE OF NEW York, Say-ha-que, an Onondaga Indian; Hos-hay-qua, an Onondaga Indian; Sho-heh-do-nah, an Onondaga Indian; Ha-on-wengo-wenlè, an Onondaga Indian; Jarvis Farmer, an Onondago Indian; Ho-do-oh-go-ah, a Seneca Indian, and Ha-ja-ah-gwysh, a Cayuga Indian, Plaintiffs, Appellants,

vs.

JOHN BOYD THACHER, Defendant, Respondent.

Know all men by these presents, that the Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 and 36 Liberty street, in the city of New York, county and State of New York is held and firmly bound unto the above-named defendant in the sum of five hundred (500) dollars to be paid to the said defendant for the payment of which well and truly to be made, it binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with its seal, and dated the 3rd day of January 1902.

Whereas, the above-named plaintiffs have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the court of appeals of the State of New York,

Now, therefore, the condition of this obligation is such, that if the above-named plaintiffs shall prosecute said writ of error to effect, and

answer all damages and costs if they fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE LAWYERS' SURETY COMPANY OF NEW YORK,
By JOEL B. ERHARDT, *President.*

Attest:
[SEAL.] By JOEL RATHBONE, *Secretary.*

STATE OF NEW YORK, *County of New York,* } ss:

On the 3rd day of January in the year 1902, before me personally came Joel B. Erhardt, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720 of the New York Session Laws of 1893.

[SEAL.] H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby "authorized and empowered to sign, execute and deliver any and "all bonds or undertakings for or on behalf of the company, and to "attach thereto the seal of the corporation, the same to be attested "by the secretary or the acting secretary."

COUNTY OF NEW YORK, ss:

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand, and the seal of the company at the city of New York, this 3rd day of January, 1902.

[SEAL.] JOEL RATHBONE, *Secretary.*

[Endorsed:] Court of appeals of the State of New York. The Onondaga Nation & o'rs, plaintiffs and app'l'ts, against John Boyd Thacher, defendant and resp't. Copy. Undertaking on appeal.

Surety: The Lawyers' Surety Company of New York. —— ——, attorney for appellant. Approved under section 811 Code of Civil Procedure.

(Endorsed:) The within undertaking approved sixth of January 1902. R. W. Peckham. Filed Jan'y 16, 1902.

I James E. Hubbell clerk of the supreme court of the State of New York for and in the county of Onondaga do hereby certify that the annexed papers constitute and are the writ of error allowed herein by the Honorable Rufus W. Peckham associate justice of the Supreme Court of the United States and that copies of the bond filed upon the granting of the said writ, of the record and proceedings upon which the court of appeals acted in rendering judgment herein, of the judgment and opinion of said court, of the order and judgment of the supreme court thereupon, of the citation with proof of service, and of the whole and each and every of the said papers the originals of all of which were duly filed in this office.

[Onondaga County Seal.]

JAS. E. HUBBELL,
County Clerk.

[Endorsed:] Supreme court. The Onondaga Nation & o'rs vs. J. B. Thacher. Return.

In the Court of Appeals of the State of New York.

THE ONONDAGA NATION; TE-HES-HA, SAYHAQUE, HOS-HAY-QUA, Sho-heh-do-nah, Ha-on-wen-go-wen-le, and Jarvis Farmer, Onondaga Indians; Ho-do-oh-go-ah, a Seneca Indian; Ha-ja-ha-gwysh, a Cayuga Indian, and The University of the State of New York, Plaintiffs and Appellants,

against

JOHN BOYD THACHER, Defendant and Respondent.

Brief for Plaintiffs.

Facts.

First Head: Nature of the Action and the Appeal.

The action was originally brought by the Onondaga Nation and Te-hes-ha, "on behalf of all of the Ho-de-no-sau-nee as well as themselves" and the defendant answered, alleging:

First. That he was "the true and lawful owner of each and every "of said belts of wampum" (fol. 59);

Secondly. Denied that they were the property of the Ho-de-no-sau-nee (fol. 72), and

Thirdly. Alleged that the plaintiffs had not capacity to sue (fol. 76).

At the beginning of the trial the other plaintiffs were brought in (fol. 80), and the court made an order amending the complaint by inserting at the beginning, this allegation: The "plaintiffs bringing

"this action on behalf of all the Ho-de-no-sau-nee as well as themselves, show to the court" and by adding the following other allegations: "That on the twenty-sixth day of February, 1898, the "Onondaga nation elected the University of the State of New York "to the office of wampum-keeper, and by bill of sale, sold and "transferred to the University of the State of New York all its interest in the said wampums."

The order further ordered—"that the answer be deemed to deny "the said allegations" (just quoted) "without further service if so "desired by the defendant, and that the defendant may plead the "statute of limitations" (fol. 79).

The defendant served no further answer.

The trial court dismissed the complaint upon the grounds:

1. That the action could not be maintained without a demand; and

2. That though the wampums had once been the property of the Five nations they had come to be the individual property of Thomas Webster, an Onondaga Indian, who had sold them to General Carrington, who had sold them to Doctor Crane, who had sold them to the defendant (fols. 473–479).

An appeal had been taken by the defendants and it had been argued when the opinion of the court in *Johnson v. The Long Island Railway Company* (162 N. Y. 462:—opinion *post*, Appendix 1) came down and was furnished the appellate division. The appellate division thereupon affirmed the judgment—holding

First. That the defendant plaintiffs had not, under the *Johnson case*, capacity to sue—and, in this connection, it *is* by order amended the answer so as to make it plead want of capacity in the plaintiffs who had been brought in at the trial (fol. 514).

Secondly. That the Onondaga nation had *no power* to elect the University of the State of New York wampum-keeper—the language of the opinion being, "It seems to us, ridiculous, however, "to say that it could be constituted a wampum-keeper of any tribe "or confederacy. It was not an Indian, and had no statutory right "or power to be constituted an Indian or wampum-keeper of the "kind indicated by the evidence given in the case. This claim is "not worthy of any serious consideration" (fol. 527), and it thereupon held that the action of the University of the State of New York must fail—and,

Thirdly. It held that the defendant had good title to the belts. The reasoning of the court being—"There is proof of Webster's "ownership of the belts, in the fact of his possession thereof, *independent of any proof of his having been a wampum-keeper*, for years "prior to his transfer thereof in 1891" (fol. 533).

Second Head: The Findings.

"I. That during a period of many years prior to the year 1713, "there existed a confederacy of Iroquois Indians composed of the "Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated

" in their own language as the Ho-de-no-sau-nee, but known and " referred to in history as the League of the Five Nations.

" II. That thereafter and in or about the year 1713, another tribe " known as the Tuscaroras was received into said confederacy and " thereafter the league was known and referred to as the League of " the Six Nations.

" III. That during the earliest period of the existence of said con- " federacy, the Indians of which said league was composed made " use of strings of wampum beads or shells braided or pleated " together in broad bands and commonly known as wampum belts, " as a means of commemorating and preserving the memory of im- " portant events such as the making of treaties, the coming of the " white man, &c., and that while the league of the Iroquois was in " active existence the tribes or members thereof composing it employed " this method of preserving the history of the events which they " conceived to be of importance.

" IV. That while such custom was in vogue the care and custody " of such wampum belts as were so used was entrusted to the Onon- " daga nation, which appointed one of its members as an official " sometimes designated as the 'wampum-keeper,' whose duty was " to preserve the same and upon ceremonial occasions expound " them and emphasize their meanings and significance.

" V. That the wampum belts mentioned and described in the " complaint in this action constituted a portion of the wampum " belts at one time made and possessed by the league and used for " the foregoing purposes.

" *VI. That at a time many years prior to the 10th day of February,* " *1891, the ancient Confederacy above referred to, composed first of the* " *five and then of the six tribes or nations of Indians above mentioned,* " *was dissolved and thereafter had no active or actual existence. That* " *its respective names had become associated with a period long gone by;* " *that the tribes of which it consisted had become separated, and to a* " *large extent scattered and dispersed throughout the United States of* " *America and the Dominion of Canada, and those who had remained* " *in this country had become wards of the Government.*

" *VII. That on and after the happening of the foregoing events, viz.:* " *the dissolution and disruption of the said Iroquois Confederacy, the* " *use of the wampum belts for any of the foregoing purposes for which* " *they were originally preparem became obsolete. The wampum there-* " *upon became nothing more than curiosities and relics of a time, condi-* " *tion and confederation which had ceased to exist, and the office or posi-* " *tion of wampum-keeper, so far as its original significance is concerned,* " *became useless and was abrogated.*

" *VIII. That on the 10th day of February, 1891, and for many years* " *prior thereto, one Thomas Webster, an Onondaga Indian, had become* " *the owner and was in possession of several of the wampum belts above* " *referred to, including those enumerated in the complaint herein. That* " *said Webster was not then, and never was, an incumbent of the office or* " *position of wampum-keeper of the Onondaga Nation or of any of the* " *individual tribes composing the Iroquois Confederacy, and that there* " *was at that time no such official position known or recognized among*

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"*the Indians composing any or either of said tribes or confederacy.*
"*That the individual or personal ownership of said Thomas Webster in*
"*said wampum belts was recognized by the said several tribes which*
"*formerly constituted said League and by the individual members thereof,*
"*and that said tribes and Indians had long prior to that time ceased to*
"*treat or regard said wampum belts as the property of either the Onon-*
"*daga Nation or the Iroquois League.*"

Italics and capitals mine.

POINTS.

Point I.

The wampums are the property of the Ho-de-no-sau-nee—that is: the Five nations or the Six nations as it may be. The plaintiff—The Onondaga Nation—is their official custodian, *forever:* and the plaintiff—The University of the State of New York—having been elected wampum-keeper by the Onondaga nation and directed by a resolution of that nation's governing council, "to get possession of "and safely keep forever all wampums of the Onondaga nation and "the Five nations and Six nations and each of them," is entitled to their possession.

I.

The trial court has found (fols. 88–91):

"I. That during a period of many years prior to the year 1713, "there existed a confederacy of Iroquois Indians composed of the "Onondaga, Oneida, Mohawk, Seneca and Cayuga tribes, designated "in their own language as the Ho-de-no-sau-nee, but known and "referred to in history as the League of the Five Nations.

"II. That thereafter and in or about the year 1713, another "tribe known as the Tuscaroras was received into said confederacy "and thereafter the league was known and referred to as the League "of the Six Nations.

"III. That during the earliest period of the existence of said "confederacy, the Indians of which said league was composed made "use of strings of wampum beads or shells braided or pleated "together in broad bands and commonly known as wampum belts, "as a means of commemorating and preserving the memory of im-"portant events such as the making of treaties, the coming of the "white man, &c., and that while the league of the Iroquois was in "active existence the tribes or members thereof composing it em-"ployed this method of preserving the history of the events which "they conceived to be of importance.

"IV. That while such custom was in vogue the care and custody "of such wampum belts as were so used was entrusted to the Onon-"daga nation, which appointed one of its members as an official "sometimes designated as the 'wampum-keeper,' whose duty it "was to preserve the same and upon ceremonial occasions expound "them and emphasize their meanings and significance.

"V. That the wampum belts mentioned and described in the

"complaint in this action constituted a portion of the wampum "belts at one time made and possessed by the league and used for "the foregoing purposes."

Point II.

The plaintiffs have capacity to sue.

I.

The Indians.

In Jackson *v.* Goodell, 20 J. R. 188, the late supreme court held that the Oneida nation had not capacity to sue.

The court of errors reversed the supreme court.

Goodell *v.* Jackson, 20 J. R. 693.

In Strong *v.* Waterman, 11 Paige 607, and Montauk Tribe *v.* Long Island R. R., 28 App. Div. 470, it was held that individual Indians had capacity to sue.

It seemed, therefore, at the time this action was begun, that either the Onondaga nation or the individual Indian plaintiffs could maintain the action.

As to this we ask leave to call to the attention of the court section 5 of the Indian law, which, as it was not cited, may possibly not have been brought to the attention of the court—it is in these words:

"§ 5. Actions in State courts.—Any demand or right of action, "jurisdiction of which is not conferred upon a peacemaker's court, "may be prosecuted and enforced in any court of the State, the "same as if all the parties thereto were citizens."

Peacemakers' courts are confined to the Senecas (fol. 281), and the trial court so held—holding that the individual Indians could bring it, but that the nation could not.

We had meant, in the existing state of adjudged cases—Chancellor Walworth's decision having been—so far as his opinion shows—based entirely upon the reversed decision of the supreme court in *Jackson v. Goodell*, 20 J. R. 188, and apparently in ignorance of its reversal by the court of errors (20 J. R. 693)—to go on with whichever plaintiff the court finally held entitled to sue and pay the bill of costs for the others.

But after the case had been argued in the appellate division, but before it was decided, the court decided the case of *Johnson v. Long Island Railroad Company*, 162 N. Y. 462 (opinion attached to this brief—Appendix, p. 1).

Assuming however that the rule in the *Johnson* case applies, and the Indians have not capacity to sue *to recover the possession* of the wampum records—we submit this:

The court distinguishing as it does, Strong v. Waterman (11 *Paige*, 607), *it follows that an individual Indian can file a bill in equity to protect the property;*

and therefore, of course, this bill is properly filed by the individual plaintiffs to enjoin the defendant from "disposing of, destroying,

"cutting, mutilating, concealing or removing out of the jurisdiction "of the court" the wampums in question—the statute—section five of the Indian law (just quoted and *post*, Appendix, p. 7)—giving them capacity to sue to that extent.

That is to say, the words of the Indian law being:

"§5. Actions in State courts.—Any demand or right of action, "jurisdiction of which is not conferred upon a peacemaker's court, "may be prosecuted and enforced in any court of the State, the same "as if all the parties thereto were citizens,"

the individual plaintiffs can file this bill to *protect* the records from destruction although they have not capacity to sue for delivery of the possession of them.

Peacemakers' courts are confined to the Senecas (fol. 281).

There should therefore, notwithstanding this, be a new trial so far as the individual Indians are concerned.

II.

The University of the State of New York.

It is a corporation "forever" with "capacity" of "suing" and "being sued" (Ap'd'x 9, 16).

The State museum is a part of it (App. 18), and it has power to buy, sell, exchange or receive by "will, gift, *or* on deposit articles "or collections properly *pertaining* thereto" (Ap'd'x 18, *i. e.*, properly pertaining to the State museum).

By chapter 586 of the Laws of 1896 the Indian section of the State museum was made (Ap'd'x 19) and there cannot be any doubt but what the wampum records in question are "properly pertaining *thereto*."

Assuming now that the Onondaga nation could give to the University of the State of New York the power "to get possession of and "safely keep forever all wampums of the Onondaga nation and the "Five nations and the Six nations and each of them" (fol. 186), it follows that the University of the State of New York can maintain this action.

II.

The Existence of the Six Nations.

In the case of *The Kansas Indians*—already cited (5 Wall., 737), the head-note contains the following:

"If the Tribal organization of Indian bands is recognized by the "political department of the National Government as existing; that "is to say, if the National Government makes treaties with, and has "its Indian agent among them, paying annuities and dealing other-"wise with 'head men' in its behalf, *the fact that the primitive habits "and customs of the tribe, when in a savage state, have been largely "broken into by their intercourse with the whites,—in the midst of whom, "by the advance of civilization, they have come to find themselves*—DOES "NOT AUTHORIZE A STATE GOVERNMENT TO REGARD THE TRIBAL

"ORGANIZATION AS GONE, and the Indians as citizens of the State "where they are, and subject to its laws."

Italics and capitals mine.

And the court, speaking by Mr. Justice Davis, said (p. 756):

"The treaty of 1854 left the Shawnee people a united tribe, with "a declaration of their dependence on the National Government for "protection and the vindication of their rights. Ever since this "their tribal organization has remained as it was before. They have "elective chiefs and an elective council; meeting at stated periods; "keeping a record of their proceedings; with powers regulated by "custom; by which they punish offences, adjust differences, and "exercise a general oversight over the affairs of the Nation. This "people have their own customs and laws by which they are gov- "erned. *Because some of those customs have been abandoned owing "to the proximity of their white neighbors*, may be an evidence of the "superior influence of our race, *but does not tend to prove that their "tribal organization is not preserved.* There is no evidence in the "record to show that the Indians with separate estates have not the "same rights in the tribe as those whose estates are held in common. "Their machinery of government, though simple, is adapted to their "intelligence and wants, and effective, with faithful agents to watch "over them. If broken into, it is the natural result of Shawnees "and whites owning adjoining plantations, and living and traffick- "ing together as neighbors and friends."

And page 757:

"Conferring rights and privileges on these Indians cannot affect "their situation, *which can only be changed by a treaty stipulation or "a voluntary abandonment of their tribal organization. As long as the "United States recognizes their national character they are under the "protection of treaties and the laws of Congress*, and their property is "withdrawn from the operation of State laws."

Italics and capitals mine.

The New York Indians, 5 Wall. 761 (reversing *Fellows v. Denniston*, 23 N. Y. 420), was this:

An act was passed taxing lands occupied by the Senecas which, however, contained this proviso (p. 764)—"PROVIDED, *That no sale "for the purpose of collecting said taxes shall in any manner affect the "right of the Indians to occupy said lands.*"

The court, speaking by Mr. Justice Nelson, said: (1866, p. 766)

"This last section furnishes, doubtless, a solution of what we "must otherwise regard as a very free, if not extraordinary, exercise "of power over these reservations and the rights of the Indians, so "long possessed and so frequently guaranteed by treaties. These "treaties are historical and need not be referred to, beginning in "1784 and coming down to 1842. That of 1794, entered into at "Canandaigua, New York, may be cited as a specimen. Third arti- "cle, 'The United States acknowledge all the land within the afore- "'mentioned boundaries (which include the reservations in question) "'to be the property of the Seneca Nation, and the United States "'will never claim the same nor disturb the Seneca Nation * * * "'in free use and enjoyment thereof; but it shall remain theirs

"'until they choose to sell the same to the people of the United "'States, who have the right to purchase,'" (p. 768) "but the rights "of the Indians do not depend on this or any other statutes of the "State, but upon treaties which are the supreme law of the land; "it is to these treaties we must look to ascertain the nature of these "rights, and the extent of them."

(p. 770:) "The tax imposed on the Buffalo reservation in 1840, "1841, 1842 and 1843, is not distinguishable from that imposed on "the Alleghany and Cattaraugus reservations. The Indians were still "in their ancient possessions and occupancy, and *till removed by the "United States* were entitled to the undisturbed enjoyment of them."

(p. 771:) "All agree that the Indian right of occupancy creates an "indefeasible title to the reservations that may extend from genera- "tion to generation, *and will cease only by the dissolution of the tribe* "or their consent to sell to the party possessed of the right of pre- "emption."

(p. 771:) "Our conclusion is that the whole of the taxes assessed "upon the three reservations (Buffalo Creek, Alleghany and Catta- "raugus), are illegal and void, *as in conflict with the tribal rights of "the Seneca* NATION *as guaranteed to it by treaties with the United "States.*"

Italics and capitals mine.

Facts as to this Matter.

In the Court of Appeals.

THE ONONDAGA NATION and Others
against
JOHN BOYD THACHER.

The Washington Treaty.

The original treaty is written on parchment and is signed by Timothy Pickering and fifty-nine Indians including Handsome Lake, Cornplanter and Red Jacket, with a seal of red sealing wax opposite each name.

There are eight witnesses and four interpreters, including Henry Abeele—who must have been the son of the "O'Bail" of the revolution and the half-brother of Cornplanter.

All this is *almost* accurately given in Folwell.

To the top and the bottom of it are attached by narrow light-blue silk braid, two strips of parchment—of the entire width of the treaty.

On the upper strip is written:

"George Washington, President of the United States of America, "to all to whom these presents shall come, Greeting:

"WHEREAS a treaty of peace and friendship between the United "States of America and the tribes of Indians called the Six nations, "was made and concluded on the eleventh day of November last by "Timothy Pickering the agent of the United States for that purpose

"appointed, on the one part and the chiefs and warriors of the Six "nations on the other part which treaty is in the form and words "following:"

Then comes the treaty—and then, upon the lower strip—this:

Now know ye, that I having seen and considered the said treaty, do by and with the advice and consent of the Senate of the United States accept ratify and confirm the same and every article and clause thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

Given in the city of Philadelphia, the twenty-first day of January in the year of our Lord one thousand seven hundred and ninety-five, and in the nineteenth year of the Sovereignty and Independence of the United States.

Seal of the United States.

G°. WASHINGTON.

By the President.
EDM. RANDOLPH.

This belt was delivered by General Washington himself to the chiefs and at the same time he gave Red Jacket a large silver medal, which I have often seen in the hands of General Parker, Red Jacket's grandson.

The wampum record of this treaty being the only thing in the way of a deed for their lands which the Indians have—at any rate the only evidence of a title protected by the Constitution of the United States—there is this question:

Can one who gets possession of one's deed establish his ownership of that deed by the use of the statute of limitations and other "unmeritorious" defences? If he can, of course, he can destroy the deed—and the evidence of the title is gone.

There is not just now any immediate danger of that in this case, because the treaty in Washington still is in the hands of the Government. But suppose the same thing were to happen to that?

AS-QUE-SENT-WAH.

The treaty of 1794, referred to and quoted by Mr. Justice Nelson above (5 Wall. 766) is the treaty of which the wampum record uppermost in the lower right-hand picture facing page 104 is the Indian record.

It was delivered by General Washington himself upon the ratification of the treaty.

That treaty contains the following:

2 Folwell's United States Laws, 437; 7 Stat. at Large, 44.

"The President of the United States having determined to hold a "conference with the Six nations of Indians, for the purpose of re-"moving from their minds all causes of complaint, and establish-"ing a firm and permanent friendship with them; and Timothy "Pickering being appointed sole agent for that purpose; and the

"agent having met and conferred with the sachems, chiefs and "warriors of the Six nations, in a general council: Now, in order to "accomplish the good design of this conference, the parties have "agreed on the following articles; which, when ratified by the "President, with the advice and consent of the Senate of the United "States, shall be binding on them and the Six nations.

"ARTICLE I.

"Peace and friendship are hereby firmly established, and shall "be perpetual, between the United States and the Six nations.

"ARTICLE II.

"The United States acknowledge the lands reserved to the Oneida, "Onondaga and Cayuga nations, in their respective treaties with "the State of New York, and called their reservations, to be their "property; and the United States will never claim the same, nor "disturb them or either of the Six nations, nor their Indian friends "residing thereon and united with them, in the free use and enjoy-"ment thereof; but the said reservations shall remain theirs, until "they choose to sell the same to the people of the United States, who "have the right to purchase.

* * * * * * *

"ARTICLE IV.

"The United States having thus described and acknowledged "what lands belong to the Oneidas, Onondagas, Cayugas and "Senekas, and engaged never to claim the same, nor to disturb "them, or any of the Six nations, or their Indian friends residing "there and united with them, in the free use and enjoyment thereof: "Now, the Six nations, and each of them, hereby engage that they "will never claim any other lands within the boundaries of the "United States; nor ever disturb the people of the United States in "the free use and enjoyment thereof."

"ARTICLE V.

The Seneka nation, "*all others of the Six nations concurring*," cede to the United States land for "a waggon road" from Fort Schlosser to Lake Erie, as far south as Buffalo creek.

"ARTICLE VI.

"In consideration of the peace and friendship hereby established, "and of the engagements entered into by the Six nations; and be-"cause the United States desire, with humanity and kindness, to "contribute to their comfortable support; and to render the peace

" and friendship hereby established, strong and perpetual; the United " States now deliver to the Six nations, and the Indians of the other " nations residing among and united with them, a quantity of goods " of the value of ten thousand dollars. And for the same considera- " tions, and with a view to promote the future welfare of the Six na- " tions, and of their Indian friends aforesaid, the United States *will* " *add the sum of three thousand dollars to the one thousand five hundred* " *dollars, heretofore allowed them* by an article ratified by the Presi- " dent, on the twenty-third day of April, 1792; *making in the whole* " *four thousand five hundred dollars; which shall be expended yearly* " *forever in purchasing cloathing, domestic animals, implements of hus-* " *bandry, and other utensils suited to their circumstances,* and in com- " pensating useful artificers, who shall reside with or near them, and " be employed for their benefit. The immediate application of the " whole annual allowance now stipulated to be made by the superin- " tendent appointed by the President for the affairs of the Six nations, " and their Indian friends aforesaid."

Italics mine.

(p. 441:) DONE *at Kon-on-daigua, in the State of New York, the eleventh day of November, in the year one thousand seven hundred and ninety-four.*

Appropriation Bill of March, 1901.

31 Stat. at Large, p. 1064.

"SIX NATIONS OF NEW YORK.

" For permanent annuity, in clothing and other useful articles, per " sixth article of treaty of November eleventh, seventeen hundred " and ninety-four, four thousand five hundred dollars."

" Approved, March 3, 1901 " (p. 1085).

There is an United States agent for this (1 Off. Reg. 772).

And they are just as numerous as they were in the days of their great Indian empire (fol. 269).

Brief.

I.

The court has overlooked the fact that there is not any evidence to sustain the finding that

" Said University of the State of New York never was selected or " raised up to the position or office of wampum-keeper, and no offi- " cial proceedings were ever begun on the part of any of the tribes " of Indians which formerly composed said Iroquois confederacy " for the purpose of conferring any such position or office upon said " University of the State of New York, assuming that there is or was " at the time of said alleged proceedings any such official position."

I make this with much diffidence because the opinion of the court says the exact opposite, but, as it seems to me that there is no such evidence, I respectfully and with deference submit that it is my duty to beg the attention of the court to the fact.

The evidence is as follows:

Upon the trial the plaintiffs offered in evidence what they claimed to be certain proceedings of the governing council of the Onondaga nation,

These alleged proceedings are printed in full as an appendix to this.

and the following things then happened (fol. 182):

Mr. Paige: * * *

"I will offer in evidence minutes of a Council held by the Onon-"dagas on the 26th of February, 1898.

"You do not object on the ground that the signatures are not proved?

"*Mr. Delehanty:* No, I will admit that is A GENUINE DOCUMENT, *and the genuine signatures are there.*"

Capitals and italics mine.

This "genuine document" recites that "at a council of the Onon-"daga nation" in Onondaga, "held pursuant to call and notice "given to all the chiefs"—there were present twelve chiefs includ-ing the president, secretary and treasurer of the nation, and that the following resolution was unanimously adopted—

"*Resolved,* That the University of the State of New York be and it "hereby is elected wampum-keeper of the Onondaga Nation, *with* "*full power and it shall be its* DUTY *to* GET *possession of and safely keep* "FOREVER all wampums of the Onondaga Nation and the Five Na-"tions and Six Nations and each of them.

"Whereupon the University of the State of New York was unan-"imously elected to the office of Wampum-Keeper."

And it is further said to be *a true copy from the minutes.*

And then follow the "genuine" signatures of the twelve chiefs.

Capitals and italics mine.

Then followed this (fol. 197):

Mr. Paige: * * *

"I will put in from the record book of the Onondaga nation the "constitution with which the nation is at present governed. I will "have a copy sent to the stenographer. That will be Ex. 8."

This constitution is printed at folio 448. It contains the follow-ing:

"2nd. The sachem chiefs shall be enrolled in the Book of Rec-"ords, which shall be kept by the secretary of the nation in each "meeting of the chiefs; roll shall be called by the secretary of the "nation, *eight* of there number of the chiefs shall constitute a quorum "for the transaction of national business;"

There is not anything else of importance to this case in it except that it provides for the offices of president, secretary treasurer and marshall, and defines their duties.

We then called Baptiste Thomas, the treasurer of the nation, who testified that the number of the chiefs was about twenty-four (24) (fol. 436), and that the chiefs were appointed in the same way that they always had been (fol. 434).

We had already proved and the trial court had found that the Onondaga nation was the official custodian (fol. 90).

The above is ALL *the evidence.*

It is thus gravely admitted upon the record that at a regular council—being the sole governing body of the Onondaga nation—the university was directed and it was made its "DUTY to get possession of and safely keep forever all wampums."

The Onondaga nation has, we will say, some sixteen hundred members. Of course *all the sixteen hundred* members cannot be, all of them, keeping *four* wampums all the time.

Still, it is the *duty* of the nation to keep them safely. This being the case, cannot the governing council, even though it be composed of nothing as good as infants—since an infant can sue by a guardian while an Indian cannot sue in any way—*cannot the governing council put them in a safe deposit company?*

If it can, it is with deference submitted, that it can "deposit" them with the University of the State of New York.

Appendix.

At a council of the Onondaga nation held at the house of Daniel La Forte in Onondaga on the 26th day of February 1898 held pursuant to call and notice given to all the chiefs.

Present	
Te-hes-ha	Daniel La Forte, *president*
Say-ha-que	Baptist Thomas, *treasurer*
Ah-wa-ga-yat	Orris Farmer, *secretary of the nation*
Ha-say-gwa-e-say	Jacob Skenandoah
So-day-qua-scum	Asa Wheelbarrow
Sa-da-qua-seh	Jacob Bigbear
Ha-e-ho	Levi Webfter
O-gayis-qua	John Farmer
Ho-yo-ne-a-ne	William Webster
Ga-na-ha-guh-yat	Wallace Carpenter
Ha-wen-jo-wah-e	Enoch Skenandoah
Hos-hay-qua	Charles Lyon

Sachems and chiefs

The following resolutions were unanimously adopted.

Resolved, That the University of the State of New York be and it hereby is elected wampum-keeper of the Onondaga nation, with full power and it shall be its duty to get possession of and safely keep forever all wampums of the Onondaga nation and the Five nations and Six nations and each of them.

Whereupon the University of the State of New York was unanimously elected to the office of wampum-keeper.

A true copy from the minutes.

Say-ha-que	his BAPTIST x THOMAS. mark.
Sa-da-qua-seh	his JACOB x BIGBEAR. mark.
Ha-wen-jo-wah-e	ENOCH SCANANDOAH.
Ha-say-gwa e-say	JACOB A. SCANADOAH.
Ha-e-ho	his LEVI x WEBSTER. mark.
Ho-yo-ne-a-ne	his WILLIAM x WEBSTER. mark.
O-gayis-qua	JOHN R. FARMER.
Ga-na-ha-guh-yat	his WALLACE x CARPENTER. mark.
So-day qua-scum	his ASA x WHEELBARROW. mark.
Ah-wa ga-yat	ORRIS FARMER.
Te-hes-ha	DANIEL LA FORTE.
Hos-hay-qua	CHARLES LYON.

In presence of—

HARRIET MAXWELL CONVERSE.
A. G. RICHMOND.
EDWARD WINSLOW PAIGE.

STATE OF NEW YORK:

Court of Appeals.

CLERK'S OFFICE.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that I have compared the annexed copy of excerpts from the briefs for the appellants, filed and used in the court of appeals of the State of New York, on the argument of the appeal in that court, in the case entitled as above, argued December 12th, 1901, with the originals on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this sixteenth day of July, A. D., 1902.

[Seal Court of Appeals, State of New York.]

W. H. SHANKLAND, *Clerk.*

It is stipulated that the foregoing "excerpts from the briefs for the appellants" may be added to the record in the Supreme Court of the United States and that the points therein were taken in the State court and thus *is* a part of the record.

JOHN A. DELEHANTY,
Attorney for Defendant in Error.
FREDERICK W. CAMERON,
Attorney for Defendant in Error.

EDWARD WINSLOW PAIGE
Attorney for Plaintiff in Error.

[Endorsed:] File No. 18,394. Supreme Court U. S. October term, 1902. Term No. 234. The Onondaga Nation *et al.*, P. E., *vs.* Jno. Boyd Thacher. Stipulation of counsel and addition to record. Filed October 10", 1902.

Endorsed on cover: File No. 18,394. New York supreme court. Term No. 234. The Onondaga Nation, Te-hes, ha, Say haque, *et al.*, plaintiffs in error, *vs.* John Boyd Thacher. Filed February 4th, 1902.

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